TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 557.

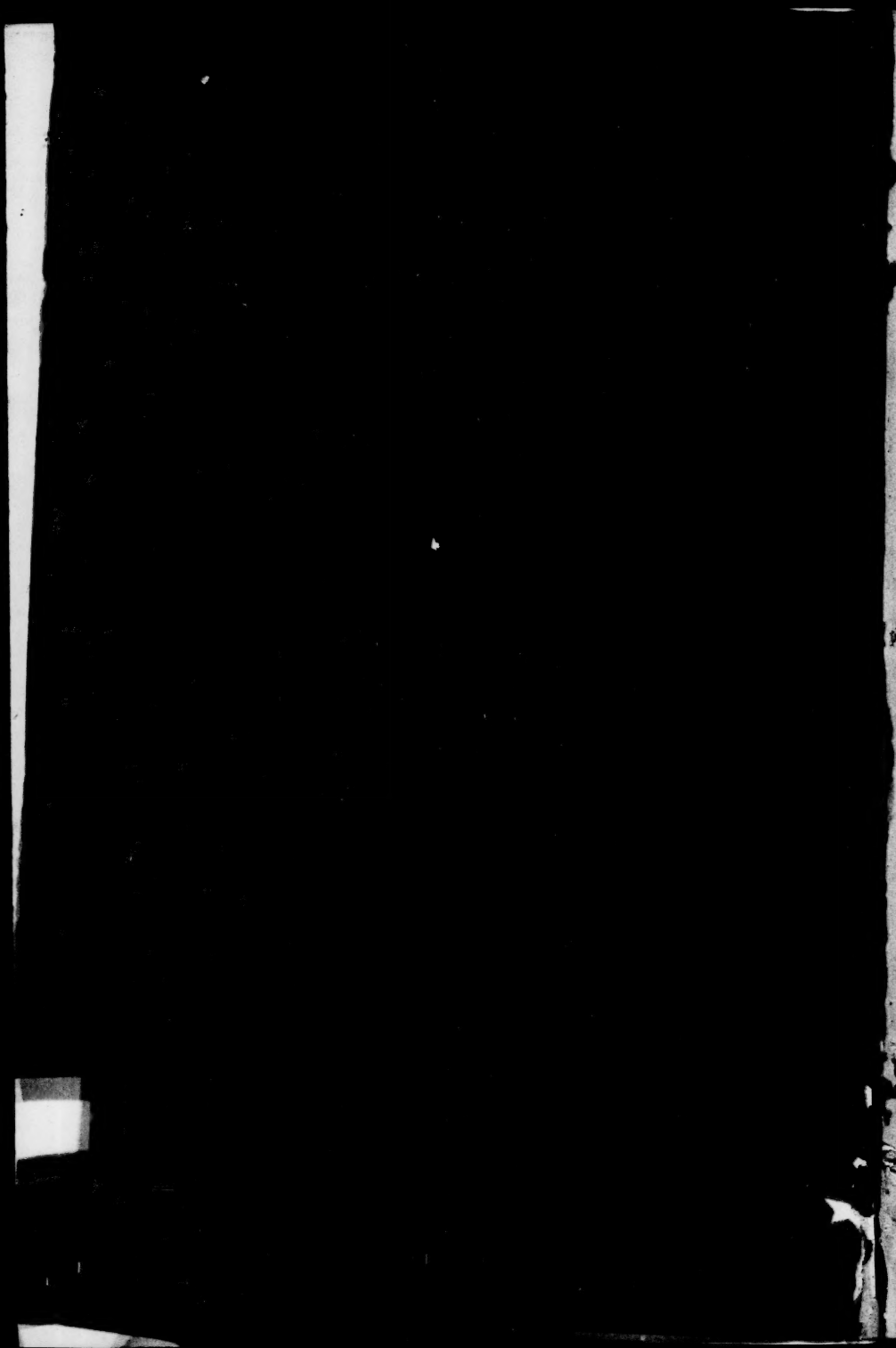
W. S. GILMAN, N. A. COWDREY, LUTHER C. CLARK, AND HENRY A. BARLING, APPELLANTS,

vs.

THE ILLINOIS AND MISSISSIPPI TELEGRAPH COMPANY, THE DES MOINES VALLEY RAILROAD COMPANY, AND OTHERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED AUGUST 17, 1875.



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1,2 United States circuit court, district of Iowa.

W. S. GILMAN ET AL.
vs.
THE ILLINOIS AND MISSISSIPPI TELEGRAPH Co. et al. } In equity.

TRANSCRIPT.

3 Pleas in the circuit court of the United States of America for the district of Iowa, at a term thereof begun and holden at the United States court-room, in the city of Des Moines, in the State of Iowa and district aforesaid, on the second Monday of October, the same being the 12th day of October, A. D. 1874, before the Hon. John F. Dillon, United States circuit judge for the eighth circuit, and Hon. James M. Love, United States district judge for said district of Iowa.

4 Be it remembered that heretofore, to wit, on the 22d day of July, A. D. 1873, W. S. Gilman, N. A. Cowdry, Luther C. Clarke, and Henry A. Barling, by their attorneys, John Fyffe, esq., and Messrs. Grant & Smith, filed in the clerk's office of the circuit court of the United States for the district of Iowa their bill of complaint against the Illinois and Mississippi Telegraph Company, the Des Moines Valley Railroad Company, & Peter Melendy, United States marshal; which said bill of complaint is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

W. S. GILMAN, N. A. COWDRY, ET AL.
vs.
THE ILL. & MISS. TEL. CO. & OTHERS.

Application for injunction before Hon. James M. Love, judge of the
5 *U. S. district court for the district of Iowa, at chambers.*

The deft., the Ills. and Miss. Tel. Co., by its atty., Cook, Richman & Bruning, appear—

1st. Specially to object that this court, in which the bill is entitled, has no jurisdiction of the parties in this case, as appears by the petition of plffs.

2nd. If the said objection to the jurisdiction shall be overruled, then said defts., by its attys., demur to the petition of plffs., and say that the same is not sufficient in law, and that they are not bound to answer the same, for reasons—

1st. The bill of plffs. does not show any equity in the plffs. to
6 the relief asked.

2. It does not show any interest in plff. in subject-matter of suit.

3rd. Plffs. do not show any title in the monies or property levied upon.

4. The plffs. have a full & complete remedy at law.

(Signed) COOK, RICHMAN & BRUNING,
Attys. for Defts.

7 In the circuit court of the United States in & for the district of Iowa.

W. S. GILMAN & N. A. COWDRY, LUTHER C. Clarke, & Henry A. Barling, pltfs., *agt.*
THE ILLINOIS & MISSISSIPPI TELEGRAPH Company, The Des Moines Valley Railroad
8 Company, & Peter Melendy, United States marshal, defts.

SIRS: Take notice that, on behalf of the plaintiffs, we shall, on Friday, the 20th day of June instant, apply to the Hon. Jas. M. Love, one of the judges of this court, in chambers, at his residence, Ottumwa, at 2 o'c. p. m., for an order that an injunction do issue to restrain The Illinois & Mississippi Telegraph Company, and Peter Melendy, United States marshal, from levying under the execution issued on the judgment obtained by the said telegraph company against the said Des Moines Valley Railroad Company, on the 24th May, 1872, and from levying upon or selling thereunder any of the property of said railroad company included in the mortgages in the petition mentioned, and from attaching by garnishment or otherwise any of the monies of said company in the hands
9 of agents, shippers, or other persons accountable to it.

Dated 16 June, 1873.

(Signed) JNO. FYFFE,
Plffs.' Solr.
GRANT & SMITH,
Sols. for Clarke & Barling.

I admit service of the within notice this 16th June, 1873.
(Signed) PETER MELENDY,
U. S. Marshal,
By S. S. ETHREDGE,
Sp. Deputy.

THE ILLINOIS & MISSISSIPPI TELEGRAPH COMPANY,
Per COOK, RICHMAN & BRUNING, *its Attorneys.*

I admit service for The Des Moines Valley R. R. Co.
GEORGE B. SMYTH, *V. P.*

10 In the circuit court of the United States in and for the district of Iowa.

W. S. GILMAN AND N. A. COWDRY, LUTHER C. Clarke, Henry C. Barling, plaintiffs,
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH
11 Company, The Des Moines Valley Railroad Company, and Peter Melendy, United States marshal, defendants.

Petition in equity.

I. The plaintiffs state that by deed dated 16th February, 1857, made between the Keokuk, Fort Des Moines and Minnesota Railroad Company,

of the first part, and Luther C. Clarke and Samuel R. Curtis, of the second part, the said party of the first part, for the considerations therein mentioned, granted and conveyed to the said parties of the second part, all and singular, the Keokuk, Fort Des Moines and Minnesota Railroad, then being made & constructed in the State of Iowa, and extending 154 miles, or thereabouts, commencing at a point in the city of Keokuk, in the county of Lee, and State of Iowa, and extending thence along the valley of the Des Moines River through the counties of Van
12 Buren, Wapella, Mahoska, Marion, & Polk to Fort Des Moines, the capital of the State of Iowa, said grant being intended to include and convey the right of way and all lands occupied thereby, together with superstructure and track thereon, and to be put thereon, and all rails and materials used thereon or procured therefor, inclusive of the iron rails purchased, or to be purchased, and paid for with the bonds in said mortgage mentioned or the proceeds of said bonds, or any of them; also, all and singular the bridges, viaducts, culverts, fences, stations, depot-grounds, station-houses, depot-buildings, and erections built and to be built, then held in the name of the said party of the first part, or thereafter to be acquired by them, in connection with the said road, or in anywise thereunto appertaining; and also all & singular the locomotives, cars, tools, materials, machinery,
13 contracts, and all other property, real & personal, and all interests therein, owned or held by the said party of the first part, in its corporate name or otherwise, or thereafter to be acquired by said party of the first part in connection with said railroad, or otherwise, together with the tolls, rents, & profits to be had, gained, or levied therefrom, and all franchises, rights, & privileges of the said party of the first part of, into, or concerning the same as by said mortgage, which was duly acknowledged and recorded in the recorder's office of each county through which the said road passes, by a copy of same, marked "Exhibit A" and attached to this petition, will appear.

II. That said mortgage was and is to secure the payment of
14 bonds of said company to the amount of $2,310,000, with interest at 8 per cent., and which bonds were issued and negotiated within a year after the date of said mortgage, and the proceeds applied in the construction and equipment of said railroad, and which bonds, besides a large arrear of interest, as hereafter mentioned, are still due and unpaid.

III. That the said Samuel R. Curtis afterwards died, and Henry A. Barling, one of the plaintiffs herein, was duly appointed his successor, and is now acting as one of the trustees under said mortgage.

IV. That said Keokuk, Ft. Des Moines & Minnesota Railroad Company was at the time of the execution of the mortgage next hereinafter mentioned, and now is, called & known and exists as a corpora-
15 tion under the laws of the State of Iowa by the name of the Des Moines Valley Railroad Company.

V. That by deed of mortgage dated 1st October, 1868, the said Des Moines Valley Railroad Company granted and conveyed, subject to the terms and condition of said mortgage, to Clarke & Curtis, to W. S. Gilman, and N. A. Cowdry the entire corporate property of said railway company, and all its franchise and privileges constructed and thereafter to be constructed, then held and acquired or thereafter to be constructed and acquired, extending from the then terminus of their line of railroad in the city of Des Moines, through the counties of Polk, Dallas, Boone, Greene, & Webster, to the town of Fort Dodge; and also, subject to the

lien created and existing by reason of same mortgage to Clarke
16 and Curtis, the entire corporate property of said railroad company, and also all its franchises and privileges, constructed or to be thereafter constructed, then held and acquired and to be thereafter held and acquired, extending from the city of Des Moines to the Mississippi River at Keokuk; and also, subject as aforesaid, all the right of way and land occupied by the said railroad and appurtenances from Keokuk to Fort Dodge, and also the land acquired or appertaining, or which might thereafter be acquired or appropriated, for station-houses, depots, engine-houses, car-houses, warehouses, machine-shops, work-shops, superstructures, erections, and fixtures at any and all points on said roads from and including Keokuk to Fort Dodge; and also, subject as aforesaid, all the locomotives, tenders, passenger-cars, freight cars, and every and all cars and carriages, tools, machinery, wood, coal,
17 and fuel, and equipments for a railway, and now owned by said company; and also all goods and chattels, wood, fuel, oil, and supplies now owned or which should thereafter be owned by said company in any way relating to said railroad company, or the running and operating the same; and also all rents, issues, income, tolls, profits, currencies, monies, rights, benefits, or advantages had or to be had or owned by said company in any way whatsoever; which said mortgage was duly acknowledged, and was recorded in the recorder's office in each county through which said road passes, as by a copy of same, marked "Exhibit B" and attached to this petition, will appear.

VI. That said last-mentioned mortgage was given to secure bonds of said railroad company amounting to $4,690,000, which bonds
18 were issued and negotiated within two years after the date of said mortgage, and the proceeds thereof applied in constructing the extension of said road from Des Moines to Fort Dodge, and in materials, equipments, machinery, and supplies for the running and operating of said road, and which bonds, to the amount of over $2,500,000, together with a large arrear of interest thereon, as hereinafter mentioned, are still due and unpaid.

VII. That the said railroad now is, and has been for upwards of four years last past, operated by the Des Moines Valley Railroad Company, the earnings thereof being in the first place applied to meet the necessary operating expenses, and the balance toward paying the interest on said bond.

19 VIII. That the earnings of said road have been for a considerable time, and now are, insufficient to meet the annual interest on said bond, and that there is now an arrear of interest due on the bonds secured by said first mortgage amounting to about $300,000, and that the entire of the interest on the debt secured by said second mortgage is due and unpaid from April 1st, 1871.

IX. That the Illinois and Mississippi Telegraph Company, being a corporation established under the laws of, and doing business in, the State of Illinois, obtained a judgment in the United States circuit court for the district of Iowa, against the said Des Moines Valley Railroad Company, on the 24 May, 1872, for the sum of $23,724, with interest at 6 per cent.

20 X. That said judgment was not obtained for a mechanic's or workman's lien.

XI. That in the month of July last, W. S. Gilman and N. A. Cowdry, as trustees of said mortgage, filed their bill of complaint in the circuit court of Polk County, Iowa, against the said Des Moines Valley Railroad Company and several parties therein named, including the trustees

of said first mortgage, and the said Illinois & Mississippi Telegraph Company, to foreclose the said second mortgage for a sale of said road, and the appointment of a receiver, and to take the necessary accounts as in such cases usual.

XII. That on the 31 day of May, 1873, a decree was pronounced in said suit, in the presence of the counsel for said telegraph com-
21 pany, ascertaining the rights and privities of the creditors of said company, and amongst the rest of said telegraph company, ordering payments of the sums due to them by the said Des Moines Valley Railroad Company and, in default of payment, ordering a sale of said road and appurtenances.

XIII. That the said Illinois & Mississippi Telegraph Company has issued a writ of execution on said judgment against the said company, and has delivered the same into the hands of the United States marshal for the district of Iowa, and has levied upon the cash belonging to said company in the hands of the agents at the various depots, by serving notices of garnishment upon them.

22 XIV. That the said monies so in the hands of said agents consists solely of the earnings of said road for freight and passengers, and that if said monies be attached the business of said company as common carriers of goods and passengers will be materially hindered, if not entirely stopped, to the great inconvenience and detriment of the public, to the permanent injury of said road, and the security of plaintiff and the other creditors of said road, who have liens thereon prior to that of said telegraph company, will be endangered if defendant be permitted to levy on the income and earnings of said road, or on the rolling-stock, materials, and utensils used in operating same.

XV. That plaintiffs are residents and citizens of the State of
23 New York, and the deft., the Des Moines Valley Railroad Company, is a corporation organized under the laws of the State of Iowa.

XVI. Plaintiffs' pray the said Illinois & Mississippi Telegraph Company, and the said Peter Melendy, United States marshals, with his deputies and assistants, may be restrained by the injunction of this court from levying under the execution upon said judgment so obtained against said Des Moines Valley Railroad Company, and from levying upon or selling thereunder any of the property of said company included in said mortgages, or from attaching, by garnishment or otherwise,
24 any of the monies of said company in the hands of agents, shippers, or other persons accountable to it.

(Signed) JOHN FYFFE,
Attorney for Plffs. Gilman & Cowdry.
GRANT & SMITH,
Attorneys for Plffs. Clarke & Barling.

STATE OF IOWA, *County, ss:*

John Fyffe, being duly sworn, deposes and says that he is attorney for the plaintiff in the above-entitled cause, and has charge of said cause for plaintiffs; that said plaintiffs are now residents of the State of Iowa, and are absent therefrom; that he has knowledge of the matters and things alleged in the foregoing petition; that he has read the fore-
25 going petition, and knows the contents thereof, and that the allegations therein set out and contained are true, as he verily believes.

(Signed) JOHN FYFFE.

Subscribed & sworn to before me by the said Fyffe this 20th day of June, 1873.

[NOTARIAL SEAL.] (Signed) JOHN V. WINGATE,
Notary Public.

26 EXHIBIT A.

Mortgage or trust-deed from the Des Moines Valley Railroad Company (then called the Keokuk, Fort Des Moines and Minnesota Railroad Company) to Luther C. Clarke and Samuel R. Curtis, in trust to secure the payment $2,310,000, and interest at 8 per cent., principal due April 1, 1877.

This indenture, made the 16th day of February, in the year
27 of our Lord one thousand eight hundred and fifty-seven, between the Keokuk, Fort Des Moines and Minnesota Railroad Company, a corporation duly formed and existing under the laws of the State of Iowa, of the first part, and Luther C. Clarke, of the city of New York, and Samuel R. Curtis, of the city of Keokuk and State of Iowa, of the second part, witnesseth:

That whereas the said party of the first part, at a meeting of its board of directors, held according to law, in this month of February, did pass the following resolutions, to wit:

"Resolved, That for the purpose of raising funds for the construction and equipment of the Keokuk, Fort Des Moines and Minnesota Railroad, two thousand three hundred and ten bonds of this company, of
28 one thousand dollars each, be signed by the president and countersigned by the secretary, dated the 16th day of February, 1857, and payable the first day of April, 1877, bearing interest at the rate of eight per cent. per annum from April 1st, 1857, payable semi-annually on the first day of October and April, in each and every year, at the Continental Bank, in the city of New York, with coupons or warrants thereto attached, to be signed by the secretary.

"The said bonds shall be issued and disposed of only at the rate of fifteen thousand dollars per mile of road, upon which the grading shall have been prepared or fully provided for by other means of the company, and shall, at the option of the holders of one-third in amount of the outstanding bonds, become due and payable whenever any interest due thereon shall have remained unpaid for six months.

29 "Resolved, That the payment of the principal and interest of the said bonds be secured by a mortgage bearing even date with said bonds, executed by the president and countersigned by the secretary, under the corporate seal of this company, to two persons to be therein designated, and the survivor of them and the successors of them, as trustees for the holders of the said bonds, upon the said railroad, and all the lands occupied thereby, together with the superstructure and track thereon, and all rails or materials used thereon or procured therefor, including the iron rails purchased or to be purchased, or paid for with the above-described bonds, or with the money obtained therefor; also, all and singular the viaducts, culverts, fences, stations, depot-grounds, station-houses, depot-buildings, built or to be built, now held in the name of this company, or hereafter to be acquired by them,
30 or in anywise thereto appertaining; and also all the locomotives, cars, tools, materials, machinery, contracts, and all other property, personal and real, and all interest thereon owned or held by this company, in their corporate name, or otherwise or hereafter to be acquired,

together with the tolls, rents, and profits to be had therefrom, and all franchises, rights, and privileges of this company, of, in, to, or concerning the same; provided, that such mortgage shall not prevent this company from selling, hypothecating, or otherwise disposing of any city, county, or other bonds, obligations, or securities received in payment for stock of this company, or otherwise, or from collecting subscriptions for stock, or selling any lands or other property not necessary to be retained for the roadway, depot-grounds, stations, machine and repairing shops, nor required for the construction or use and operations of the road, or from collecting all monies due, or to grow due, to this company;
31 and said mortgage shall provide that all the monies received by this company from sales of property thus reserved shall be applied to the construction, equipment, and maintenance of said road.

"Resolved, That as a further security for the payment of the principal and interest of the said bonds this company will, and the said mortgage is to provide that it shall, in each year, beginning with the year 1860, appropriate and set apart from the net earnings of said railroad, and deposit with the said trustees, a sum equal to one and a half per cent. on the total amount of the outstanding unconverted bonds, sold or otherwise disposed of, as and for a sinking fund of their redemption of said bonds as the same may become due, which said sinking fund shall
32 be invested by the said trustees in the bonds issued persuant to the foregoing resolution, provided the same can be purchased at or under their par value, and in case they cannot be so purchased, then in such bonds or in such other safe and productive state stocks or bonds (paying therefor not exceeding the market value thereof on the city of New York) as this company by resolution of the board of directors may require.

"Resolved, That said mortgage shall contain a provision that if any of the said bonds shall not be paid at maturity, or in case default shall be made in the payment of the interest secured thereby, and the same shall remain unpaid for the space of six months after the same shall have been demanded, or in case of failure to apply all monies re-
33 ceived from the sales of property not included in said mortgage to the construction or equipment of said railroad, or in case of failure to appropriate, set apart, and deposit with the said trustees the monies required in the foregoing resolution to be appropriated and set apart for a sinking fund, then, and in that case, it shall be lawful for the said trustees to take possession of the premises and property so to be mortgaged, and operate, use, and employ the same, making from time to time all needful repairs, alterations, and additions, and apply the proceeds thereof to the payment of the principal and interest of said bonds, or on the written request of one-third in amount of the holders of said bonds then outstanding, unpaid, or unconverted and un-
34 redeemed, to sell the said mortgaged property and apply the proceeds to the payment of all sums due on said bonds.

"Resolved, That the said mortgage shall further provide, that in case of the death, resignation, or disability of the trustees named therein, or either of them, or of a vacancy in the said trust, from any cause, this company shall, within thirty days after notice of such death, resignation, or inability, by instrument in writing under their corporate seal, appoint another trustee or trustees in his or their stead, such appointment to be approved and confirmed by a judge of the supreme court of the State of Iowa, and also that a majority in interest of the bondholders
35 may at any time, by instrument in writing under their hands and

The said trustees, their survivor or survivors, successor or successors, shall have and receive a reasonable compensation for their services rendered in and about the trust herein and hereby created, to be
56 allowed and paid from time to time by the said party of the first part.

It is mutually understood and agreed that in case of death, mental incapacity, resignation, or disability of either or both of the said parties of the second part, their survivor or successor or successors, or any of them, it shall be the duty of the said party of the first part, within thirty days after notice of such death, incapacity, resignation, or disability, by instrument in writing, under their corporate seal, to appoint another trustee or trustees in his or their stead, such appointment to be approved and confirmed by a judge of the supreme court of the State of Iowa, and in case a failure of the said party of the first part to make such
57 appointment within the said time, it shall be lawful for the holders of the said bonds to the amount of ten per cent. of the outstanding bonds, unconverted or unredeemed, by instrument in writing, under their hands and seals, to appoint other persons as trustees to fill the vacancies so occurring, in whom the estate, interests, trusts, and powers herein and hereby granted or created shall be vested from the time of such appointment.

And it is also hereby provided that a majority in interest of the holders of the said bonds may at all times, by an instrument in writing and under seal, constitute and appoint any other person or per-
58 sons as trustee or trustees in place of the said parties of the second part, or either of them, or their successors, in which case this grant shall operate in favor of the person or persons so constituted and appointed to the same extent as this indenture operates in favor of the parties of the second part herein.

And such person or persons so appointed by a majority of the bondholders shall notify the parties of the second part hereto, or their survivor or survivors, of his or their appointment, either personally or by letter, and thereafter possess all the powers, rights, and privileges and estate vested in this instrument in the said parties of the second part, and shall become the successor or successors of the said parties of the second part to all intent and purposes whatsoever.

59 It is hereby understood and agreed that the holders of a majority in amount of the said bonds which are at the time outstanding, unconverted, and unredeemed shall be regarded as constituting the majority in interest of the bondholders.

And the said parties of the second part do, for themselves and for their successors in the trust hereby created, hereby covenant to and with the said party of the first part, to hold the property, rights, and franchises hereby conveyed to and vested in them, subject to the conditions and provisions hereinbefore contained, and faithfully to apply all money or property which may come into their possession as trustees, under this instrument, in the manner and to the purposes here-
60 inbefore prescribed and set forth.

In witness whereof the said party of the first part has caused these presents to be executed by the president and countersigned by its secretary, for this purpose duly authorized, and the corporate seal of said company to be hereunto affixed, and the said parties of the sec-

ond part have hereunto set their hands and seals the day and year first above written.

[SEAL.] HUGH T. REID,
President.

WM. LEIGHTON, *Secretary.*

LUTHER C. CLARKE. [L. S.]
SAML. R. CURTIS. [L. S.]

Duly acknowledged by the parties.

61 EXHIBIT B.

Des Moines Valley Railroad Company, formerly Keokuk, Ft. Des Moines and Minnesota Railroad Company.

Consent of bondholders to the making of an additional mortgage on the railroad, &c.

62 The undersigned are the bondholders in the amounts set opposite their names, respectively, of the bonds of the Keokuk, Fort Des Moines and Minnesota Railroad Company, (now the Des Moines Valley Railroad Company,) dated Feb'y 16, 1867, part of an issue of bonds, amounting in the aggregate to $2,310,000, secured by a deed of trust or mortgage made by said company on its railroad from Keokuk to Fort Des Moines, and other property, to Luther C. Clarke and Samuel R. Curtis, bearing even date with said bonds and duly recorded.

It is provided by an act of the legislature of the State of Iowa, passed February 7th, 1860, that no other deed of trust or mortgage upon the said railroad shall be made by the said company, except
63 with the written consent of the holders of a majority of the said bonds secured by the aforesaid deed of trust or mortgage to Luther C. Clarke and Samuel R. Curtis, such consent to be acknowledged and recorded in the same manner as said deed of trust or mortgage.

This indenture therefore witnesseth that we, the subscribers, constituting a majority of the holders of the bonds secured by the said existing mortgage, in consideration of the fact that it has now become desirable for the company to make another mortgage upon its property for the purpose of completing its road to Fort Dodge, about 85 miles beyond Des Moines, and in consideration of the fact that such addition to the road would greatly enhance the value of the property in which we
64 are the holders of the existing first mortgage, and would thereby render our bonds more secure, and in further consideration of one dollar to us in hand paid, the receipt whereof is hereby acknowledged, do hereby waive all the rights conferred upon us by said act of the legislature of Iowa, passed February 7, 1860, in so far as it limits the Des Moines Valley Railroad Company to a single mortgage, and we hereby consent that the board of directors of said company may make any deed of trust or mortgage on their railroad and franchises from Keokuk to Des Moines which they may deem will best promote our interests as well as their own, always secondary to and subject to
65 our first lien upon the road from Keokuk to Des Moines.

Subscribed and dated July 15, 1868.

Names of bondholders.	Residence.	Amount and number of bonds.
Ann A. Ives, Nos. 992 to 999, 8 bonds, 1040-1045, 6 bonds—total, 14 bonds, $1,000 each.	Providence, R. I	$14,000 00
Hope B. Russell, Nos. 1046 to 1058, inclusive, being 13 bonds of $1,000 each.	Providence, R. I	13,000 00
Sylvester Taylor, trustee for self & H. G. Russell, trustees, Nos. 562 to 576 inclusive, 9 bonds of $1,000 each.	Providence, R. I	9,000 00
Brown & Ives	Previdence, R. I	164,000 00
Mrs. Carter Brown	Providence, R. I	6,000 00
Jas. Battell	New York	40,000 00
Jas. Battell, ex., &c	New York	30,000 00
Isaac N. Seymour	New York	12,000 00
George Talbot Olyphant	New York	12,000 00
Sanger, Wallace & Co	New York	10,000 00
Morris Ketchum	Westport, Conn	74,000 00
66 Ketchum, Phipps & Belknap	New York	40,000 00
Mathias Nichol	New York	20,000 00
C. S. Seguine Johnson	New York	8,000 00
H. K. Corning	New York	28,000 00
G. W. Duer, prest. Nat. Bk. of State of N. Y	New York	72,000 00
Paton & Co	New York	69 000 00
Lucius Hopkins	New York	9,000 00
Orlando M. Bryant & Co	New York	10,000 00
John P. Atkinson	Brooklyn	10,000 00
Isaac M. Bull	Rhode Island	10,000 00
Thos. Mandell, ex., &c. of Sylvia A. Howland	New Bedford, Mass	96,000 00
Thos. Mandell	New Bedford, Mass	50,000 00
Henry A Barling, trustee of Hattie H. R. Green	New York	139,000 00
John L. Rutgers	New Brunswick, N. J	10,000 00
W. Scott & Sons	New York	16,000 00
J. J. Van Nostrand	Brooklyn	10,000 00
Edward Hodges, for Mary A. Hodges	New York	10,000 00
E. LeRoy	Keokuk	5,000 00
67 E. Johnstone	Ft. Madison	$1,000 00
Mrs. S. R. Curtiss	Keokuk	2,000 00
Rix, Hale & Co	Keokuk	13,000 00
Guy Wells	Keokuk	9,000 00
Moses A. Hoppock	New York	12,000 00
Gilman, Son & Co., for themselves & others	New York	65,000 00
E. D. Morgan & Co, for Edmund D. Pistree	New York	10,000 00
Solon Humphreys, trustee, &c	New York	10,000 00
E. L. Corning, by L. Moran, attorney	New York	10,000 00
Francis Moran	New York	5,000 00
Wm. Paxson, for E. D. Paxson	New York	10,000 00
Eliza C. Nichol, per H. Nichol, atty	New York	25,000 00
Samuel M. Beckley	New York	15,000 00

68 EXHIBIT C.

Mortgage or deed of trust to W. S. Gilman and N. A. Cowdry in trust to secure the payment of $4,690,000 at 8 per cent. per annum interest, due October 1st, 1898.

This is a first mortgage upon about 465,000 acres of land and
69 upon the railroad and its equipments extending from Des Moines to Fort Dodge, both in Iowa, a distance of 85 miles; and is a second mortgage on the railroad and equipment extending from Keokuk to Des Moines, both in Iowa, a distance of about 162 miles. The mortgage on said 162 miles prior in lien to this is to secure the payment of

$2,310,000. The 465,000 acres of land are pledged as a sinking-fund to pay said $4,690,000 at the market-price of the bonds issued, not exceeding 120 per centum and accrued interest.

This indenture, made in the city of Keokuk, in the State of
70 Iowa, on the first day of October, A. D. 1868, between the Des Moines Valley Railroad Company, a corporation duly and legally incorporated by and under the laws of the State of Iowa, parties of the first part, and W. S. Gilman and N. A. Cowdrey, both citizens of the city and State of New York, parties of the second part, witnesseth:

That whereas the said Des Moines Valley Railroad Company are the owners in fee of the railroad extending from the city of Keokuk, in the State of Iowa, to the city of Des Moines, in said State, a distance of about (162) one hundred and sixty-two miles, which line of railroad is now subject to a mortgage or deed of trust made by said railroad company, on the 16th day of February, 1867, to Luther C. Clarke
71 and Saml. R. Curtis, in trust, to secure the payment of two millions three hundred and ten thousand dollars, ($2,310,000,) all of which is now outstanding, and a valid claim against said railroad company to that amount;

And whereas said railroad company are desirous of continuing and extending their railroad from Des Moines to Fort Dodge, a distance of about eighty-five (85) miles, and equipping the same, and also are desirous of procuring additional equipment for and repairing and e-building a portion of their existing line of road above described;

And whereas said railroad now is, and will become by the con-
72 structing of said railroad to Fort Dodge, entitled to the benefit of certain acts of Congress, and also certain acts of the State of Iowa, granting lands to aid in the building of said railroad;

And whereas said railroad company have entered into a contract with the Des Moines Railway Construction Company, by which said last-named company agree to construct and equip said railroad and to rebuild and repair portions of the existing line of said railroad, and to prepare and place upon the same a large amount of additional equipment;

And whereas said railroad company are indebted to various parties by judgments obtained against them, and by some of said parties
73 being the holders of income bonds and other claims against said railroad company;

And whereas said railroad, for the purpose of paying said indebtedness and getting their present line of railroad rebuilt, repaired, re-equipped; and for the purpose of getting said railroad, already built, extended to Fort Dodge, and fully equipped, have resolved to issue and deliver bonds of one thousand dollars each, to be numbered 1 to 4690, inclusive, all of which bonds are duly and legally made and delivered by said railroad company, and in the form following:

"UNITED STATES OF AMERICA.

No . STATE OF IOWA. $1,000

74 "Know all men by these presents that the Des Moines Valley Railroad Company are indebted to Winthrop S. Gilman, or bearer, in the sum of one thousand dollars, which said company promise to pay the bearer hereof, on the 1st day of October, A. D. 1898, at the office or agency of said company, in the city of New York, with interest thereon from the 1st day of October, A. D. 1868, at the rate of eight per

centum per annum, payable semi-annually, at the office or agency of the company, in the city of New York, on the 1st day of April and October in each year, on the presentation and surrender of the annexed coupons as they severally become due; and in case of the non-payment of interest for six months, then, without demand or notice, the principal of this bond shall become due and payable in the manner and with the
75 effect provided in the deed of trust given to secure the payment of this bond.

"The makers of this bond reserve the right to themselves and to their successors to redeem or pay this bond at their option, upon giving the notice provided in the deed of trust, at one hundred and twenty per centum and the accrued interest thereon.

"The holder of this bond shall be entitled, at any time within ten days after any dividend shall be declared and become payable upon said stock, to convert the principal thereof into the stock of said railroad company at par, receiving therefor dollar for dollar, upon the surrender of this bond with the unpaid coupons attached.

76 "This bond is one of a series amounting to $4,690,000, all of which are executed and delivered in conformity with the laws of Iowa, and the vote and resolution of the board of directors of said railroad company, the makers thereof.

"The bearer hereof is entitled to all the security derived from a mortgage or deed of trust duly executed and delivered to W. S. Gilman & N. A. Cowdrey, trustees, conveying the line of railroad and its equipment from Keokuk to Des Moines, (subject to a prior mortgage of $2,310,000,) and the said road extended from Des Moines to Fort Dodge, free from any other lien; also about 465,000 acres of land, granted by Con-
77 gress to aid in building said railroad, free from any other lien, the proceeds of sales of which land are to be a sinking-fund for the ultimate payment of principal and interest of said bonds.

"This bond shall not be valid or obligatory until it shall have been authenticated by a certificate endorsed hereon, and duly signed by both of said trustees, or their or his successor or successors, and is issued, received, and held subject to the terms and conditions contained in said mortgage or deed of trust.

"In witness whereof the Des Moines Valley Railroad Company have caused their corporate name and seal to be hereto affixed by their
78 president and secretary on the 1st day of October, A. D. 1868.

"DES MOINES VALLEY RAILROAD COMPANY.

"By

"*President.*

"*Secretary.*"

[SEAL.]

(Endorsed upon back of bond:) "$1,000 bond. No. . Des Moines Valley Railroad Company.)

☞ "First mortgage on 465,000 acres of land, and on railroad from Des Moines to Fort Dodge, 85 miles, and a second mortgage, subject to a first mortgage of $2,310,000, (or less than $15,000 per mile,) on railroad from Des Moines to Keokuk, 162 miles. Eight per cent., convertible. Interest 1st of April and October.

79 "This is to certify that the above bond is included in a mortgage to us, dated October 1st, 1868, purporting to be a first mort-

gage on about 465,000 acres of land, and on the railroad and all its equipment, income, and franchises from Des Moines

80 *bearer in the sum of one thousand dollars, which said company promise to pay the bearer hereof, on the first day of October, A. D.* 1898, *at the office or agency of said company, in the city of New York, with interest thereon from the* 1st *day of October, A. D.* 1868, *at the rate of eight per centum per annum, payable semi-annually at the office or agency of the company in the city of New York, on the* 1st *day of April and October in each year, on the presentation and surrender of the annexed coupons, as they severally become due; and in case of the non payment of interest for six months, then, without demand or notice, the principal of this bond shall become due and payable in the manner and with the effect provided*

81 *in the deed of trust given to secure the payment of this bond.*

The makers of this bond reserve the right to themselves, and to their successors, to redeem or pay this bond at their option, upon giving the notice provided in the deed of trust, at one hundred and twenty per centum and the accrued interest thereon.

The holder of this bond shall be entitled, at any time within ten days after any dividend shall be declared and become payable upon said stock, to convert the principal thereof into the stock of said railroad company at par, receiving therefor dollar for dollar, upon the surrender of this bond with the unpaid coupons attached.

82 *This bond is one of a series amounting to* $4,690,000, *all of which are executed and delivered in conformity with the laws of Iowa, and the vote and resolution of the board of directors of said railroad company, the makers hereof.*

The bearer hereof is entitled to all the security derived from a mortgage or deed of trust duly executed and delivered to W. S. Gilman and N. A. Cowdrey, trustees, conveying the line of railroad and its equipment from Keokuk to Des Moines, (subject to a prior mortgage of $2,310,000,) *and the said road extended from Des Moines to Fort Dodge, free from any other lien; also about* 465,000 *acres of land, granted by Congress*

83 *to aid in building said railroad, free from any other lien, the proceeds of sale of which land are to be a sinking-fund for the ultimate payment of principal and interest of said bonds.*

This bond shall not be valid or obligatory until it shall have been authenticated by a certificate endorsed hereon, and duly signed by both of said trustees, or their or his successor or successors, and is issued, received, and held subject to the terms and conditions contained in said mortgage or deed of trust.

In witness whereof the said Des Moines Valley Railroad Company have caused their corporate name and seal to be hereto affixed by their

84 *president and secretary on the* 1st *day of October, A. D.* 1868.

Des Moines Valley Railroad Company.

By ,
President.

[*Seal.*] , *Secretary.*

(*Endorsed upon back of bond:*) $1,000 *bond. No.* . *Des Moines Valley Railroad Company.*

☞ *First mortgage on* 465,000 *acres of land, and on railroad from Des Moines to Fort Dodge,* 85 *miles, and a second mortgage, subject to a first mortgage of* $2,310,000, (*or less than* $15,000 *per mile,*) *on railroad from Des Moines to Keokuk,* 162 *miles.*

Eight per cent., convertible. Interest 1st April & October.

85 *This is to certify that the above bond is included in a mortgage to us, date October 1st, 1868, purporting to be a first mortgage on about 465,000 acres of land, and on the railroad and all its equipment, income, and franchises from Des Moines to Fort Dodge, and a second mortgage on the railroad and its equipment, income, and franchises from Des Moines to Keokuk, in trust, to secure the payment of $4,690,000.*

And that said mortgage is properly stamped with United States reven. stamps, and that we have caused it to be duly recorded in the counties through which the road passes, and in which the land lies.

, Trustee.

86 *Now, therefore, the said Des Moines Valley Railroad Company, for and in consideration of the premises and of the sum of four million six hundred and ninety thousand dollars, received to their full satisfaction of said trustees, and for the purpose and with the intent of securing the payment of all of said bonds, with the interest due and to grow due thereon, and to secure the payment to said trustees of said sinking-fund—*

Hath granted, bargained, sold, conveyed, assigned, transferred, and confirmed, and by these presents doth grant, bargain, sell, convey, assign, transfer, and confirm, subject to the terms and conditions of said

87 *first mortgage to Clarke & Curtis, to said Gilman and Cowdrey, citizens of the city and State of New York, as trustees and in trust, and to the survivor or survivors of them, and to their successors or successor, the entire corporate property of the said railroad company, and all its franchises and privileges, constructed or to be hereafter constructed, now held and acquired, or to be hereafter constructed and acquired, extending from the present terminus of their line of railroad in the city of Des Moines, through the counties of Polk, Dallas, Boone, Green, and Webster, to the town of Fort Dodge.*

And also, subject to the lien creating and existing by reason

88 *of the mortgage or trust-deed above referred to, in favor of said Clarke and Curtis, the entire corporate property of said railway company, all its franchises and privileges, constructed or to be hereafter constructed, now held and acquired or to be hereafter constructed and acquired, extending southerly from the city of Des Moines, through the counties of Polk, Jasper, Marion, Mahaska, Wapello, Davis, Van Buren, & Lee, to the Mississippi River at Keokuk.*

Also, subject to said Clarke and Curtis' mortgage, all the right of way and land occupied by said railroad and appurtenances thereto belonging, from Keokuk to Fort Dodge; and also, subject to said Clarke &

89 *Curtis mortgage, all* all *the lands acquired and appertaining, or which may hereafter be acquired and appropriated for station-houses, depots, engine-houses, car-houses, warehouses, machine-shops, work-shops, superstructures, erections, and fixtures, together with all the appur-enances, rights, and privileges thereunto belonging, at any and all points on said road, from and including Keokuk and Fort Dodge.*

And also subject to said Clarke & Curtis mortgage, all and singular the locomotives, tenders, passenger-cars, freight-cars, and every and all other cars, carriages, tools, machinery, wood, coal, and fuel and equipments for said railway, and now owned or which shall hereafter be owned or

90 *acquired by said company; and also all goods and chattels, wood, fuel, oil, or supplies now owned or which shall hereafter be owned by said company, and in any way relating or appertaining or belonging to or connected with said railway, or the running or operating the same; and also*

all rents, issues, income, tolls, profits, currency, moneys, rights, benefits, and advantages, derived or to be derived, had or received therefrom, by said company in any way whatsoever.

And also, free and clear from all incumbrances, all the lands which may have been or which shall hereafter be donated or granted by or in
91 *any other manner acquired from the United States, or from or through the State of Iowa, to aid in building the railroad of this company or any part of it; and any such lands not required for use by the railroad for their traffic, to which this company are or shall hereafter be entitled, shall be specially set aside and appropriated to the purposes of this mortgage, together with all and singular the emoluments, income, and advantages, tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.*

And also all the estate, right, title, interest, property, claim, and demand whatsoever, in law or in equity, of the said parties of the
92 *first part of, in, and to the*

93 to Ft. Dodge, and a second mortgage on the railroad and its equipment, income, and franchises from Des Moines to Keokuk, in trust, to secure the payment of $4,690,000.

"And that said mortgage is properly stamped with United States revenue-stamps, and that we have caused it to be duly recorded in the counties through which the road passes, and in which the land lies.

"*Trustees.*"

Now, therefore, the said Des Moines Valley Railroad Company, for and in consideration of the premises, and of the sum of four mill'on six hundred and ninety thousand dollars, received to their full satis-
94 faction of said trustees, and for the purpose and with the intent of securing the payment of all of said bonds, with the interest due and to grow due thereon, and to secure the payment to said trustees of said sinking-fund—

Hath granted, bargained, sold, conveyed, assigned, transferred, and confirmed, and by these presents doth grant, bargain, sell, convey, assign, transfer, and confirm, subject to the terms and condition of said first mortgage to Clarke and Curtis, to said Gilman and Cowdrey, citizens of the city and State of New York, as trustees and in trust, and to the survivor or survivors of them, and to their successors or successor, the entire corporate property of the said railway company and all
95 its franchises and privileges, constructed or to be hereafter constructed, now held and acquired, or to be hereafter constructed and acquired, extending from the present terminus of their line of railroad, in the city of Des Moines, through the counties of Polk, Dallas, Boone, Greene, and Webster, to the town of Fort Dodge.

And also, subject to the lien creating and existing by reason of the mortgage or trust-deed above referred to, in favor of said Clarke & Curtis, the entire corporate property of said railway company, all its franchises and privileges, constructed or to be hereafter constructed, now held and acquired or to be hereafter constructed and acquired,
96 extending southerly from the city of Des Moines, through the counties of Polk, Jasper, Marion, Mahaska, Wapello, Davis, Van Buren, and Lee, to the Mississippi River at Keokuk.

Also, subject to said Clarke and Curtis' mortgage, all the right of way and land occupied by said railroad and appurtenances thereto belonging, from Keokuk to Fort Dodge; and also, subject to said Clarke and

Curtis' mortgage, all the lands acquired and appertaining, or which may hereafter be acquired and appropriated for station-houses, depots, engine-houses, car-houses, warehouses, machine-shops, workshops, superstructures, erections. and fixtures, together with all the appurtenances, rights, and privileges thereunto belonging, at any and all points
97 on said road, from and including Keokuk and Ft. Dodge.

And also, subject to said Clarke and Curtis' mortgage all and singular the locomotives, tenders, passenger-cars, freight-cars, and every and all other cars, carriages, tools, machinery, wood, coal, & fuel and equipments for said railway and now owned or which shall hereafter be owned or acquired by said company; and also all goods and chattels, wood, fuel, oil, or supplies now owned or which shall hereafter be owned by said company, and in any way relating or appertaining or belonging to or connected with said railway, or the running or operating the same.

And also all rents, issues, income, tolls, profits, currency, moneys,
98 rights, benefits, and advantages, derived or to be derived, had, or received therefrom by said company in any way whatsoever.

And also, free and clear from all incumbrances, all the lands which may have been or which shall hereafter be donated or granted by or in any other manner acquired from the United States, or from or through the State of Iowa, to aid in building the railroad of this company, or any part of it; and any such lands not required for use by the railroad for their traffic, to which this company are or shall hereafter be entitled, shall be specially set aside and appropriated to the purposes of this mortgage, together with all and singular the emoluments, income, and advantages, tenements, hereditaments, and appurtenances there-
99 unto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, claim, and demand whatsoever, in law or in equity, of the said parties of the first part, of, in, and to the same, and each and every part and parcel thereof, with the appurtenances.

It is agreed by and between the parties hereto that said Clarke and Curtis' mortgage is limited, so far as the same is a lien upon the income of said railroad company, to the income derived from that part of said railroad extending from Keokuk to Des Moines, and so far as it
100 is a lien upon the equipment and supplies of said railroad, to such pro rata of said equipment and supplies as the whole length of said railroad now constructed, or hereafter to be constructed, bears to the distance from Keokuk to Des Moines; and that said Clark & Curtis' mortgage is not a lien in any manner or form upon the railroad or any of its appurtenances hereafter acquired, constructed, or built from the present terminus of said railroad in Des Moines northerly or westerly.

In the event of said company extending their railroad northerly to the Minnesota State-line, or to any intermediate point, then they reserve from this mortgage such pro rata of the income, equipment, and
101 supplies of said railroad as the length in miles of new extension bear to the distance in miles from Keokuk to Fort Dodge.

To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto the said trustees, and to the survivors and survivor of them, and to their and his successors and successor and their and his assigns, in trust and upon the trust, uses, and purposes hereinafter expressed, of and concerning the same, for the use and benefit of the person or persons, firm or firms, bodies politic or corporate, who shall hereafter at any time become the purchasers or holders,

owners or bearers of any or either of said bonds, subject to the terms, provisions, and stipulations in said bonds contained, and also subject to the possession and management of said railroad and property by said company, and its successors and assigns, so long as no default shall be made in the payment of either interest or principal of said bonds, or in any or either of them, or in payment of the amount of money, as is herein provided for the sinking-fund, and so long as the said company shall well and truly observe, keep, and perform all and singular the covenants, agreements, conditions, and stipulations in said bond and in this indenture contained and set forth, and which are to be observed, kept, and performed by and on the part of said company.

It is further agreed that said company, with the consent in writing of said trustees, or their or his successor or successors, may sell and convey any lands herein mortgaged, and not necessary or required to be retained for the convenience and use of the company, and that the proceeds of said sales, whenever they amount to the sum of one thousand dollars, shall be applied to the purchase and cancellation of one or more of said mortgaged bonds, or of some bonds which are a prior lien upon the premises mortgaged.

And said trustees shall then be authorized to release the premises sold from this mortgage; in lieu of purchasing and cancelling said bonds, the proceeds of said sale may be invested under the sanction and with the approval of said trustees in the purchase of other property, real or personal, required for use by said railroad company, which shall be embraced in and covered by this mortgage.

It is further agreed by and between the parties hereto that said railroad company shall take up and exchange $462,000 of its income-bonds described in their indenture with G. Talbot Olyphant, dated June 11th, 1864, to which reference is made, by giving the holders thereof the bonds secured by this mortgage, as follows, viz:

Upon the receipt of $1,000 of said income-bonds and $100 in money, the said railroad company will give a thousand dollars of the 8 per cent. bonds secured by this mortgage, any difference of interest to be equitably adjusted at the time of making said exchange, excess of accrued interest on said income-bonds to be treated as part of said $100 cash to be paid.

It is also agreed that said railroad company's supplemental bonds, so called, amounting to $120,000, dated Sept. 5, 1866, now outstanding, may be exchanged for the bonds issued and secured hereunder, dollar for dollar.

And this indenture further witnesseth, that the said railroad company doth hereby covenant, promise, and agree to and with the said parties of the second part, that the said party of the first part will with all reasonable dispatch make and deliver to the said parties of the second part true and accurate list, schedule, and maps, showing the numbers, precise quantity of land, location, position, and boundaries of each, and every piece, parcel, section, or parts of sections of the aforesaid lands, not required for the necessary or convenient operation of the railroad of the party of the first part, and also lists and schedules showing the minimum valuation and prices at which the respective pieces, parcels, sections, or parts of sections of said land may be sold and conveyed, as hereinafter provided, which shall be approved by the board of directors, and signed by the president and secretary of the party of the first part, and also approved and signed by the parties of the second part.

But it is understood and agreed by and between the parties hereto, that the said party of the first part, by and with the consent and approval in writing of the parties of the second part, or of the survivors of them, or of their successor or successors, may at any time, not oftener than once in each year, from the date of the last approval by the parties of the second part, revalue all of said land not then sold, and re-affix to each parcel or section of the then unsold lands a new
108 minimum price, and upon the approval of the said parties of the second part of such new valuation or minimum prices, the same shall thereafter become binding upon all the parties hereto.

And it is further agreed that, whenever the said company shall from time to time certify to said trustees that it has sold or contracted for the sale of any sections, parcel or parcels, of said lands, at a sum not less than the minimum price thereof, fixed for the same in the manner aforesaid, the said trustees, or the survivor or survivors of them, or their successor or successors, shall and will join with the said company in duly executing a deed or contract, sufficient in law, to convey to
109 the purchaser, his heirs or assigns, all the right, title, interest, property, possession, claim, demand, and estate of both the parties to this indenture, in and to the parcel or sections of land so sold, and all lands so contracted or intended to be conveyed shall, by virtue and operation of such contract or conveyance, be released from this deed of trust and from the lien and effect thereof, and the said parties of the second part shall and will deliver such deed or contract to such purchaser upon receiving from him the whole price of such parcel or section of land, either in cash or in the mortgage-bonds hereby secured, at the par value thereof, or partly in cash or partly in said bonds, or if such lands be sold upon credit, then upon receiving from such
110 purchaser such portion of the said price as or shall be agreed to be paid in cash, (which shall not be less than ten per cent. of the whole price,) together with the mortgage upon the land thus sold, executed by the purchaser to said parties of the second part, in due form, to secure to them the payment of the residue of the purchase-money, with interest thereon at the rate of not less than 6 per cent. per annum, payable semi-annually or annually, and every such bond and mortgage shall contain a provision to the effect that in case the interest thereon shall remain in arrear and unpaid for six months after the
111 same shall become due, then the whole amount of the principal sum mentioned thereon shall thereupon, immediately after the expiration of said six months, become due and payable, and shall thereafter draw interest at ten per cent. per annum, and such mortgage shall also contain a provision that, in the case the mortgagor shall fail or neglect to pay all taxes and assessments upon such land at or before the time they become delinquent by the law, *that* then the said railroad company, or its assigns, may pay the same, and the amount so paid shall be added to the amount secured by such mortgage, and shall draw interest at ten per cent. per annum from the date of payment, and
112 every such mortgage shall also contain a personal obligation on the part of the purchaser and mortgagor to pay the principal and interest thereby secured, at the times and according to the terms, tenor, and legal effect of said bond therein mentioned.

The deed so to be given shall bear even date with the bonds and mortgages so to be executed, and shall specify the actual and true amount of the whole consideration-money or price, and the manner in which the same has been paid or secured.

Every such bond and mortgage shall be held by said trustees for the

purposes of the trust herein declared, and as a part of the trust-estate, and as security for the bonds this mortgage is given to secure.

113 And it is further agreed that the consideration-money on any such sales of land may be paid, either in whole or in part, by delivering to said parties of the second part, to be cancelled, one or more of the bonds secured by this mortgage, at their par value; and payments upon any bonds and mortgages so received, by said parties of the second part, either for principal or interest, may be made by delivering to said parties of the second part, to be cancelled, one or more of the bonds secured by this mortgage at their par value.

114 And it is further agreed that the holders of any of the bonds, or passed-due coupons thereof, secured by this mortgage, shall have the right and privilege of purchasing any of said lands not required by the company for the necessary or convenient operation of their railroad, at the then minimum price fixed by said company and approved by said trustees, and to pay therefor in said bonds or coupons, secured by this mortgage, at their par value.

And the said company further covenant and agree to and with the said trustees, their or his successor or successors, in the trust created by this deed, that for the further security and ultimate redemption of the bonds secured by this mortgage all monies and bonds and mort-

115 gages, and the proceeds and avails of all such bonds and mortgages, which may be received by said trustees and the survivors or survivor of them, or their successors or successor, as proceeds of the aforesaid lands, or otherwise under the trusts herein declared, shall constitute a sinking-fund for the redemption and payment of the bonds issued by said company and secured by this mortgage.

And it is mutually agreed that said trustees shall, immediately after any payment in money is made them, deposit the amount in the United States Trust Company of the city of New York, or some other

116 good and safe place of deposit in the city of New York.

Whenever, from time to time, there shall be any money so on deposit, said parties of the second part may, in their discretion, apply the same to the purchase or redemption of so many of the aforesaid mortgage-bonds as such monies shall from time to time be adequate to redeem at their market-value in the city of New York, provided such market-value shall not exceed one hundred and twenty per centum, exclusive of accrued interest. And whenever said monies so on de-

117 posit, or in the hands of the said parties of the second part, shall amount to the sum of twenty thousand dollars, it shall then be the imperative duty of the said parties of the second part to apply the same to the redemption of so many of said mortgage-bonds as such sinking-fund is adequate to redeem and pay.

In the event of said trustees not being able to purchase said bonds at a price not exceeding one hundred and twenty per cent., exclusive of accrued interest, they shall, so often as they have fifty thousand dollars or more in their hands applicable to the payment of bonds secured by this mortgage, without delay designate by lot so many of said bonds as they have money to pay, to which the money received by them

118 shall be applied in payment at the rate of one hundred and twenty and accrued interest. The trustees shall give notice of the numbers designated. If the owner or holder of the bonds designated for payment is known to them, a personal notice shall be sufficient. If they do not know the owners or holders of all said bonds so designated, then said trustees shall give notice of the numbers of the bonds so designated in two or more of the daily newspapers printed in the

city of New York, and shall continue said notice once in each week until the first day of the succeeding April or October, when the interest on the bonds so designated shall cease, and neither the company
119 'or their successors shall be any longer liable for the payment of the principal or interest thereof, and the premises embraced in this mortgage shall thereafter be discharged from so much of the lien hereby imposed thereon as the bonds amount to thus designated for payment.

And it is further mutually agreed that the said trustees shall and will cancel and discharge each and every of the bonds secured by this mortgage, with all the interest-warrants annexed thereto, or accompanying the same, which they shall pay, purchase, or redeem as aforesaid, or which they may receive in any payment for land as aforesaid, and that they will make or caused to be made, on each bond, a brief note or memorandum, stating how, when, and for what consideration
120 the same was cancelled, from whom the said mortgage-bond was received, and in such manner and form as will enable the said company to trace the transaction.

The said trustees shall immediately return so many bonds as are paid by them to the company cancelled, and both the company and said trustees shall keep a proper registry and account of all the bonds paid by them or designated to be paid as aforesaid, which registry or account shall be open for the examination and inspection of any parties in interest at all reasonable times, and the number or amount of said bonds thus cancelled shall be reported by said company to the stock-
121 holders of said company in each annual statement of the company made to the stockholders.

And the said company do hereby covenant, promise, and agree, for itself, its successors, and assigns, to and with the said trustees, the survivor and survivors of them or their and his successors or successor, that the said company will well and truly pay each and every of said bonds issued by them and secured by this mortgage, together with the semi-annual interest to become due thereon, at the rate of eight per cent. per annum, at the times, in the manner, and at the place specified therein.

122 And in case said company shall, for the space of six months, make default in payment of the semi-annual interest to become due upon any, either, or the whole of said mortgage-bonds, then, after the expiration of six months from the time it became due, and without demand or notice, at the election or option of a majority in interest of the holders of said bonds, expressed by a resolution at a bondholders' meeting as hereinafter provided, the whole principal sum mentioned in each and all of said mortgage-bonds then outstanding shall forthwith become due and payable, and the lien or incumbrance hereby created for the security and payment thereof may at once be enforced.

123 And it is agreed, in case of the default of the payment of the semi-annual interest as above provided, that said trustees and the survivor or successors of them are hereby expressly authorized and empowered, upon the request in writing of a majority in interest of the owners or holders of said bonds, to enter into and upon and to take actual possession of all the property, real and personal, rights, franchises, and privileges of the premises hereby conveyed, and each and every part thereof, and by themselves, or by their attorneys or agents, have, hold, use, and enjoy the same, and from time to time make all repairs and replacements, and all useful alterations, additions, and
124 improvements thereto, as fully as the parties of the first part might

have done before such entry, and to collect and receive all tolls, freight, incomes, rents, issues, and profits of the same, and of every part thereof.

And the said trustees and the survivor or survivors of them, and their successor and successors, shall and may, and are hereby expressly authorized and empowered to sell at public auction, to the highest bidder, the entire property, real and personal, rights, franchises, and privileges herein conveyed. Said sale shall be either in the city of Des Moines or in the city of New York; at least three months' notice shall be given of the time, place, and terms of said sale, by advertising the same
125 in one or more newspapers of good circulation in each of the cities of Keokuk, Des Moines, and New York, and wherever else required by law, and continuing such advertisement at least once a week until the time of sale, and they may at their discretion adjourn such sale from time to time, giving reasonable notice of the time and place where it will take place. And as the attorney or attorneys in fact of the said company, or their successors, shall have full power and authority to make, execute, and deliver to the purchaser or purchasers thereof, good, valid, and sufficient deed or deeds, conveyance or conveyances, assignments or transfers, in fee-simple or otherwise, of the entire
126 property herein conveyed, and all the rights and franchises and privileges of the company or its successors; which conveyance or conveyances, transfer or deeds, shall vest in the purchaser or purchasers all the right, title, interest, and estate whatsoever, reversionary or in possession, or which they may be entitled to receive, have, or hold of the said company, and said sale shall be a complete and perpetual bar or estoppel, both in law or in equity, against said company, its successors and assigns, and all persons or parties claiming by, from, or under it or them, in any wise or manner whatsoever. And the said company hereby covenant and agree to waive, and expressly covenant and agree that neither the company 'or their successors shall have or claim any advan-
127 tage of any valuation, appraisement, or extension laws.

The amount of the purchase money on said sale may be paid and satisfied in whole or in part by the outstanding mortgage-bonds, or any of them secured hereby, and said bonds shall be received in whole or in part payment and satisfaction by the said trustees, their survivor or survivors, successor or successors, according to their value, to be ascertained and determined by the net amount arising from said sale.

And out of the moneys received from said tolls, freights, incomes, rents, profits, and earnings of said railroad and premises, or out
128 of or from the proceeds of said sale so to be made as aforesaid, after first deducting the expenses, disbursements, cost, charges, and council-fees incurred in and about the conducting of said sale, or the working and operating said railroad, including the compensation and commission of said trustees in and about the execution of this trust, and all expenses of repairs, replacements, alterations, additions, and improvements, and all payments for taxes, assessments, charges, or liens on said premises or any part thereof, the said trustees shall, if the amount received be sufficient for that purpose, pay said mortgage-bonds or so many of them as shall be then outstanding and unpaid, together with all interests then due upon the same, and if the amount
129 be insufficient, then to divide the same pro rata among the outstanding bonds, and the surplus of all such moneys or proceeds of sale, if any there be, shall be paid to said company or their successors or assigns.

And it is further covenanted and agreed by and between the parties

hereto, that in case of any judicial foreclosure-sale or other sale of the premises embraced in this mortgage, under the decree of any court having jurisdiction thereof, based upon the foreclosure of this mortgage, and the holders of a majority of the then outstanding bonds, secured by this mortgage, shall, in writing, request the said trustees, they or his survivor or survivors, successor or successors, they are or he
130 is authorized to purchase the premises embraced herein for the use and benefit of the holders of the then outstanding bonds secured by this mortgage.

And that having so purchased said premises, the right and title thereto shall vest in said trustee or trustees, and no bondholder shall have any claim to the premises, or to the proceeds thereof, except for his pro-rata share of the proceeds of said purchased premises, as represented in a new company or corporation to be formed for the use and benefit of the holders of the bonds secured hereby.

And that said trustees or their successors or successor, survivors or survivor, may take such lawful measures as he or they deem
131 for the interest of said bondholders, to organize a new company or corporation for the benefit of the holders of the bonds secured by this mortgage.

Said new company or corporation shall be organized upon such terms, conditions, and limitations, and in such manner as the holders of a majority of said outstanding bonds, secured by this mortgage shall, in writing, request or direct; and said trustees so purchasing shall thereupon reconvey the premises so purchased by him or them to said new company or corporation.

And, t is further agreed that the said trustees, his or their sur-
132 vivor, successor, or successors, may appoint and employ, at the expense of the said trust-estate, all such attorneys, counsellors, clerks, book-keepers, engineers, or other agents as may be reasonably necessary in the execution of any of the trusts herein or hereby declared, and shall not be answerable for the defaults, or other misconduct or neglect, of such attorneys, counsellors, clerks, book-keepers, engineers, or other agents, unless chargeable with culpable negligence in their selection.

And further, that neither of said trustees shall be answerable for the acts, omissions, or defaults of his associate, nor shall either of them, or their survivor, successor, or successors be responsible for any-
133 thing short of gross negligence or wilful defaults in the discharge of his duties.

And it is further mutually agreed by all parties hereto that said trustees, their or his successor or successors, survivor or survivors, shall receive from said company, for his or their services in the acceptance of this trust, and the signing and delivery of the bonds issued hereunder, each of them one bond of $1,000.

And for any further services hereunder he or they shall receive as follows, viz:

For services under any foreclosure proceedings to foreclose this mortgage, the sum of one-fifth of one per centum on the par amount
134 of the bonds, to be secured by this mortgage, then outstanding, exclusive of all cash disbursements.

For services in selling and conveying lands herein described, and applying the proceeds to the sinking-fund as herein provided, the sum of 2 per centum on the par amount of the bonds cancelled i n that manner, exclusive of all cash disbursements.

The above commissions to be in full payment of both trustees, and to be equally divided between them.

And it is further mutually agreed that said trustees, his or their successors or successor, survivor or survivors, may be removed from
135 the office of trustees or trustee hereunder, by the vote of a majority in interest of the holders of said bonds, at any meeting called for that purpose.

And also the said trustee or trustees, his or their successors or successor, survivor or survivors, may resign this trust and be thereby discharged from future liabilities thereunder by a notice of thirty days, in writing, to said company or to its successors.

And it is further natually agreed, that in the case of the death, removal, resignation, incapacity, or inability of both or either of the said trustees to act in the execution of the trust hereby created,
136 then a majority of the holders of said bonds may select and designate in writing one or more competent persons to fill the vancancy so occurring in manner aforesaid.

And until the bondholders make such selection, the remaining acting surviving trustee and president of the company are hereby empowered to select and appoint, by an instrument in writing, a competent person to fill the vacancy so created, and if there be no remaining or surviving trustee, then the president of the company, with the consent in writing of the owners or holders of said bonds, to the amount of two hundred thousand dollars, may select and appoint, as aforesaid, one or more persons to fill the vacancy, until the bondholders make an
137 appointment of said trustee or trustees; and in either case the person or persons selected shall have and possess, and be vested with, the same rights and powers, as a trustee or trustees, as he or they would have had and possessed, or been vested with, had he or they been originally made a party or parties to this indenture, and shall perform said duties in all respects, until such appointment shall be made in manner aforesaid; and notwithstanding any vacancy or vacancies as aforesaid, said remaining surviving, acting, or competent trustee shall have full power and authority to execute each and all trusts hereby created.

The said company, and their successors and assigns, hereby
138 covenant to make, execute, and deliver all such other or further instruments, deeds, or indentures as may be necessary to enable the person or persons so appointed to execute the trust hereby created, as fully and perfectly in all respects as he or they could here executed the same if originally a party to this indentnre.

And it is further mutually agreed that whenever and as often as any contingency shall arise in which the action of a majority in interest of the holders of said bonds shall be necessary, or in which the said bondholders are herein declared to have any discretionary voice or power, it shall be the duty of said trustees, and of each of them, and he
139 or they are hereby authorized and required, to call a meeting of all the holders of the bonds secured by this mortgage, to be held in the city of New York, by advertisements to be published at the expense of the said company, three times a week for six weeks in at least two newspapers of large circulation, amongst the business community in said city, and in one daily paper, published in Keokuk, Iowa, and in case said trustees shall neglect or refuse to call any meeting, then it may be called by a majority in interest of said bondhoders, and at such meetings so convened a majority in interest of the holders of said bonds shall be competent to exercise, in person or by proxy, all the
140 powers and authorities conferred upon them herein.

And any person appearing at said meeting of bondholders, and claiming the right to participate therein, shall, if requested by any bondholder present thereat, produce the bond or bonds upon which such person may claim the right to vote at such meeting, or file an affidavit with the chairman of such meeting that he, the person so claiming the right to participate in such meeting, is a holder of one or more of the bonds aforesaid, or the duly-authorized proxy of such holder, in which affidavit he shall specify the amount and number of the bonds
141 which he claims to hold or to represent, before being allowed to vote at such meeting, except for the purpose of temporarily organizing the same; and on the adjournment of such meeting all such affidavits shall be delivered to the railroad company, or its successors, to be filed among the records of said company.

And the said company, for themselves and their successors and assigns, hereby covenant and agree, for the consideration aforesaid, to execute and deliver any further reasonable and necessary deed or deeds, conveyance or conveyances, to the said trustees, their survivor, successor, or successors, for the more fully securing the payments of
142 said bond, particularly for the conveyance of any right, interest, or property acquired by said company subsequent to the date hereof.

Provided always, and this grant and conveyance is upon the express condition, that, upon the payment in full of said bonds and the interest due thereon, or on the conversion thereof into the stock in manner named in said bonds, or exhibiting said bonds cancelled to the said trustees, his or their survivor, successor, or successors, then the estate, title, and interest of the said trustees, his or their survivor, successors, or succes sor, shall cease, determine, and become void, and he or they shall,
143 upon request of the company, or their successors, duly execute and deliver a proper release or satisfaction of this mortgage.

In witness whereof the Des Moines Valley Railroad Company have caused this indenture to be subscribed in its corporate name by its president and secretary, and have caused its corporate seal to be hereto affixed.

DES MOINES VALLEY RAILROAD COMPANY,
[SEAL.] By D. W. KILBOURNE, *President.*
A. BRIDGEMAN, *Secretary.*

In presence of—
HENRY STRONG,
GEO. E. KILBOURNE.

144 STATE OF IOWA,
County of Lee, ss:

Be it remembered that on the 16th day of October, 1868, before me, a notary public in and for said State and county, came David W. Kilbourne and Arthur Bridgeman, who are personally known to me to be the identical persons whose names are affixed to the foregoing indenture as respectively president and secretary, and acknowledged the same to be the voluntary act and deed of said Des Moines Valley Railroad Company; and they each, being by me duly sworn, deposes and says, each for himself, that he, David W. Kilbourne, is president, and that he, Arthur Bridgeman, is secretary of said railroad company; that
145 they signed the foregoing instrument as president and secretary, and caused the corporate seal of said company to be affixed hereto, all as the act and deed of said company, by order and authority of said company, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my official notarial seal the day and year above named.

[NOTARIAL SEAL.] J. H. BARKER,
Notary Public.

(Endorsed:) W. S. Gilman, N. A. Cowdrey, &c., vs. The Illinois & Mississippi Telegraph Co. Petition. Filed July 22, 1873. George B. Corkhill, clerk.

146 On the same day, to wit, July 22, 1873, the said complainant, by their attorneys, filed in said clerk's office their amended bill of complaint in said cause; which said amended bill is in the words and figures following, to wit:

Be it remembered that the motion for the allowance of a writ of injunction coming on for hearing before me on the 20th day of June, 1873, and the plaintiff appearing, by John Fyffe and E. S. Benton, their attorneys, and it appearing that due notice of this motion has been given to all the parties defendants in said bill, and the said Illinois and
147 Mississippi Telegraph Company also appearing, by Judge Richmon and Judge Caton, to resist said motion, and plead their objections against said motion, and counsel having been heard for and against the same, the same was submitted to the court and taken under advisement.

And be it further remembered that on the 21st day of June, 1873, the said plaintiff asked and obtained leave of the court to amend their said bill herein, and on the 27th day of June, 1873, presented to the court their amended bill; and the said motion for a writ of injunction being fully submitted to the court, it is hereby ordered that the writ of injunction be issued by the clerk of the court as prayed for in
148 said original and amended bills, upon the plaintiff filing with said clerk a bond, with sureties to be approved by said clerk, in the sum of thirty thousand dollars, and that said writ be directed to the said Illinois and Mississippi Telegraph Company, its agents, officers, and attorneys, and to the said Peter Melendy, United States marshal for Iowa, his deputies and assistants, enjoining and restraining them, and each of them, as prayed in the said original and amended petitions, until the further order of the court.

(Signed) J. M. LOVE, *Judge.*

149 To the judges of the circuit court of the U. S. for the district of Iowa:

Wm. S. Gilman and N. A. Cowdrey, Luther C. Clarke and Henry Barling, each a citizen of the State of New York, brings this their amended bill, by leave of the court first had and obtained, against
150 The Illinois & Mississippi Telegraph Company, a corporation organized under and by virtue of the laws of the State of Illinois, and doing business in said State and a citizen thereof, and Peter Melendy, United States marshal for the State of Iowa, of Cedar Falls, and a citizen of Iowa, and The Des Moines Valley Railroad Company, a corporation duly organized under and by virtue of the laws of the State of Iowa, and doing business in said State, and a citizen thereof.

And thereupon your orators complain and say that on the 16th day of February, 1857, the Keokuk, Ft. Des Moines and Minnesota Railroad Company, of the first part, for a good and valuable consideration, granted

and conveyed to Luther C. Clarke and Samuel R. Curtis, of the second part, all & singular the Keokuk, Fort Des Moines and Minnesota
151 Railroad, then being made and constructed in the State *State* of Iowa, and extending 154 miles or thereabouts, commencing at a point in the city of Keokuk, in the county of Lee and State of Iowa, and extending thence along the valley of the Des Moines River, through the counties of Van Buren, Wapella, Mahaska, Marion, and Polk, to Fort Des Moines, the capital of the State of Iowa, said grant being intended to include, and did include, and convey the right of way and all lands occupied thereby, together with the superstructure and track thereon, and to be put thereon, and all rails and materials used thereon or procured therefor, inclusive of the iron rails purchased or to be purchased and paid for with the bonds in said mortgage mentioned, or the proceeds of said bonds or any of them; also all and singular the bridges, viaducts, culverts, fences, stations, depots-grounds, station-houses, depot
152 buildings and erections, built and to be built, then held in the name of the said party of the first part, or thereafter to be acquired by them, in connection with the said road, or in anywise thereunto appertaining, and also all and singular the locomotives, cars, tools, materials, machinery, contracts, and all other property, real and personal, and all interest therein owned or held by the said party of the first part, in its corporate name or otherwise, or thereafter to be acquired by said party of the first part, in connection with said railroad or otherwise, together with the tolls, rents, and profits to be had, gained, or levied therefrom, and all franchises, rights, and privileges of the said party of the first part of, in, to, or concerning the same, as by said mortgage, which was duly acknowledged, and recorded in the recorder's
153 office of each county through or in which the said road passes. A copy of same is attached to the original bill herein and is made a part hereof.

II. That said mortgage was and is to secure the payment of bonds of said company to the amount of two million three hundred and ten thousand dollars, ($2,310,000,) with interest at 8 per cent., and which bonds were issued and negotiated within a year after the date of said mortgage, and the proceeds applied in the construction and equipment of said railroad, and which bonds, besides a large arrear of interest as hereafter mentioned, are still due and unpaid.

III. That the said Samuel R. Curtis afterwards died, and Henry
154 A. Barling, one of the plaintiffs herein, was duly appointed his successor, and is now acting as one of the trustees under said mortgage.

IV. That said Keokuk, Fort Des Moines and Minnesota Railroad Company was, at the time of the execution of the mortgage next hereafter mentioned, and now is, called and known and exists as a corporation, under the laws of the State of Iowa, by the name of The Des Moines Valley Railroad Company, duly and legally organized under the laws of said State, and doing business therein as a citizen thereof.

V. That by deed of mortgage dated October 1st, 1868, the
155 said Des Moines Valley Railroad Company granted and conveyed, subject to the terms and conditions of said mortgage to Clarke and Curtis, to W. S. Gilman and N. A. Cowdrey the entire corporate property of said railway company, and all its franchises and privileges, constructed and thereafter to be constructed, then held and acquired, or thereafter to be constructed and acquired, extending from the then terminus of their line of railroad in the city of Des Moines, through the counties of Polk, Dallas, Boone, Greene, and Webster, to the town of

Fort Dodge, and also subject to the lien created and existing by reason of same mortgage to Clarke and Curtis, the entire corporate property of said railroad company, and also all its franchises and privileges constructed or to be thereafter constructed, then held and acquired, and to be thereafter held and acquired, extending from the city of Des
156 Moines to the Mississippi River, at Keokuk; and also subject as aforesaid, all the right of way and land occupied by the said railroad and appurtenances from Keokuk to Ft. Dodge; and also the land acquired or appertaining, or which might thereafter be acquired or appropriated for station-houses, depots, engine-houses, car-houses, warehouses, machine-shops, workshops, superstructures, erections, and fixtures at any and all points on said roads, from and including Keokuk to Ft. Dodge; and also, subject as aforesaid, all the locomotives, tenders, passenger-cars, freight-cars, and every and all cars and carriages, tools, machinery, wood, coal, and fuel and equipments for a railway, and now owned by said company; and also all goods and chattels, wood, fuel, oil, and supplies now owned or which should thereafter be
157 owned by said company in any way relating to said railroad company, or the running and operating the same; and also all rents, issues, incomes, tolls, profits, currencies, monies, rights, benefits, or advantages had or to be had, or owned by said company in any way whatsoever; which said mortgage was duly acknowledged, and was recorded in the recorder's office of each county through which said road passes, as by a copy of same, marked "Exhibit B" and attached to the original petition herein and is made a part hereof, will appear.

VI. That said last-mentioned mortgage was given to secure bonds of said railroad company amounting to four million six hundred and ninety thousand dollars, ($4,690,000.00,) which bonds were issued and negotiated within two years after the date of said mortgage, and the pro-
158 ceeds thereof applied in constructing the extension of said road from Des Moines to Ft. Dodge, and in materials, equipments, machinery, and supplies for the running and operating of said road, and which bonds, to the amount of over two million five hundred thousand dollars, ($2,500,000,) together with a large arrear of interest thereon, as hereinafter mentioned, are still due and unpaid.

VII. The said railroad now is, and has been for upwards of four years last past, operated by the Des Moines Valley Railroad Company, the earnings thereof being in the first place applied to meet the necessary operating expenses, and the balance towards paying the interest on said bonds.

159 VIII. That the earnings of said road have been for a considerable time, and now are, insufficient to meet the annual interest on said bonds, and that there is now an arrear of interest due on the bonds secured by said first mortgage, amounting to about three hundred thousand dollars, ($300,000,) and that the entire amount of the interest on the debt secured by said second mortgage is due and unpaid from April 1st, 1871.

IX. The said Illinois and Mississippi Telegraph Company, being a corporation established under and by virtue of the laws of the State of Illinois, and doing business in said State, and a citizen thereof, did, by the *consideration* of the United States circuit court for the dis-
160 trict of Iowa, obtain a judgment against the said Des Moines Valley Railroad Company, on the 21st day of May, 1872, for the sum of $23,734.10, with annual interest at 6 per cent.

X. That said judgment was not obtained on a mechanic's or workman's lien.

XI. That in July, A. D. 1872, W. G. Gilman and N. A. Cowdrey, as trustees of said mortgage, filed their bill of complaint in the circuit court for the county of Polk, in the State of Iowa, against the said Des Moines Valley Railroad Company, and other parties therein named, including the trustees of said first mortgage, and the said Illinois and Mississippi Telegraph Company, to foreclose the said second mort-
161 gage, for the sale of said road and the appointment of a receiver, and to take the necessary accounts as in such cases usual.

XII. That on the 31st day of May, 1873, a decree was pronounced by the court in said suit, in the presence of the counsel for the said telegraph company, ascertaining the rights and privileges of the creditors of said railroad company, and, amongst the rest, of said telegraph company, ordering payment of the sums due to them by the said Des Moines Valley Railroad Company, and, in default of payment, ordering a sale of said road and appurtenances.

XIII. That the said Illinois and Mississippi Telegraph Com-
162 pany has procured the issuance of a writ of execution on said judgment against the said railroad company heretofore rendered by the United States circuit court as aforesaid, and has delivered said writ into the hands of Peter Melendy, United States marshal for the district of Iowa, and who is a citizen of the State of Iowa, who has levied the same upon the monies, receipts, tolls, and incomes belonging to and the property of said railroad company, in the hands of its agents and officers at the various depots on the line of said road, by serving notice of garnishment upon them, and requiring them to retain the said monies, receipts, tolls, incomes, and other property of the said railroad company in their hands, and to appear and answer as said garnishee at the next term of this court, to be held at Des Moines on 2nd Tuesday of October next.

163 XIV. That said money so in the hands of said agents consists solely of the earnings of said road for freight and passengers, and that if said monies be attached and taken on said execution the business of said company as a common carrier of goods and passengers will be materially hindered and delayed, if not entirely stopped, to the great inconvenience and detriment of the public, and to the permanent injury of said road, and the security of plaintiffs and the other creditors of said road, who have liens thereon prior to that of said telegraph company, will be endangered if defendants be permitted to thus levy on the said incomes and earnings of said road, or on the rolling-stock, materials, tools, or other property of said railroad company used in the management of said road, and in running and operating the same,
164 and to compel the said agents, officers, and employees of the road to retain the same in their hands until the next term of this court, as they are required by said garnishee notice to do.

That by so retaining said monies, incomes, tolls, earning, and property of said company the security of the said creditors will be irreparably injured, and to their great loss and damage.

That the said monies, tolls, incomes, earnings, and other property of said company so endeavored to be subjected to the payment of said judgment in favor of said telegraph company is absolutely necessary and essential to the running and operating of said road, and is the only means that the said company have with which to run and operate said road, and to continue said business as common carrier, and to keep in repair
165 said road and the rolling-stock belonging thereto.

XV. Your orators therefore pray that the said Illinois and Mississippi Telegraph Company, the said Peter Melendy, and the said

Des Moines Valley Railroad Company may be made parties to this proceeding; that they may be brought into court in the usual manner and answer hereto.

Your orators also pray that a writ of injunction may be granted by this court, to be issued by the clerk thereof, and directed to the said Illinois and Mississippi Telegraph Company, its agents, officers, and attorneys, and to the said Peter Melendy, United States marshal as aforesaid, his deputies and assistants, enjoining and restraining them from further proceedings under the execution aforesaid, in favor
166 of said telegraph company, so far as concerns the said property hereinbefore mentioned belonging to said railroad company, and enjoining and restraining them or either of them from proceeding further with said garnishee proceedings, or from proceeding under any execution issued or to be issued upon said judgment so far as concerns said property, incomes, & earnings of said railroad company, and they, or either of them, be enjoined and restrained from further attaching or garnisheeing any of the agents or officers of said railroad; to subject any of the monies of said railroad company in their hands to the payment of said judgment in favor of said telegraph company until the further order of this court.

And your orator further prays that upon the final hearing of this case the said injunction may be made perpetual, and for such
167 other and further order as your orator may be entitled to in equity, and for their costs; and your orators will ever pray.

(Signed) JOHN FYFFE,
& STILES & BURTON,
Sols. for Plffs. Gilman & Cowdrey.
GRANT & SMITH,
Sols. for Clarke & Barling.

168 UNITED STATES OF AMERICA,
District of Iowa, ss:

John Fyffe, being duly sworn, deposes and says that he is one of the attorneys for plaintiffs in the foregoing bill; that he has read the same and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to these matters he verily believes it to be true.

(Signed) JOHN FYFFE.

Subscribed in my presence and sworn to before me this 24th June, 1873.

[NOTARIAL SEAL.] (Signed) D. F. CALLENDER,
Notary Public, Polk Co., Iowa.

169 And on the 1st day of September, A. D. 1873, the same being rule-day in said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa. Rule-day, September 1st, 1873.

W. S. GILMAN & N. A. COWDREY ET AL.
vs.
THE ILLINOIS & MISSISSIPPI TEL. CO. } In equity.

Come now J. Scott Richman, atty. for deft., and acknowledge' the serv-

ice of a subpœna on him in above-entitled cause, as also upon Cook, Richman & Brunning, who were attys. of deft., and enter an appearance protesting that the court acquires no jurisdiction of deft. by the service of said subpœna.

COOK RICHMAN & BRUNNING.
J. SCOTT RICHMAN.

170 And upon the 22d day of July, A. D. 1873, there was issued from said clerk's office a subpœna in chancery to the Illinois and Mississippi Telegraph Company; which said subpœna is in words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Iowa, ss:

The President of the United States to the Illinois and Mississippi Telegraph Company:

We command you, and each of you, that you appear before the
171 judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the second Monday of October, it being the 13th day of October next, (A. D. 1873,) to answer to the bill and amendment to bill of complaint *to* W. S. Gilman and N. A. Cowdrey, Luther C. Clarke and Henry Barling, this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Iowa, returnable to the September rule-day, it being Monday the first day of September, A. D. 1873.

Witness the Hon. Nathan Clifford, sen. associate justice of the
172 Supreme Court of the U. S., at Des Moines, this the 22nd day of July, A. D. 1873, and of the Independence the ninety-eighth year.

[L. S.] (Signed) GEORGE B. CORKHILL,
Clerk.

MEMORANDUM.—The within-named defendant is notified that unless it enter its appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable as above stated, the complaint will be taken against it as confessed, and a decree entered thereon accordingly.

[L. S.] (Signed) GEORGE B. CORKHILL,
Clerk.

173 Service of the within subpœna upon us acknowledged this 23rd day of August, 1873.

COOK, RICHMAN & BRUNING.
J. SCOTT RICHMAN.

174 UNITED STATES OF AMERICA,
District of Iowa, ss:

The President of the United States to The Illinois and Mississippi Telegraph Company:

We command you, and each of you, that you appear before the
175 judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the second Monday of October, it being the 13th day of October next, A. D. 1873, to answer to the bill and amendment to

bill of complaint *to* W. S. Gilman and N. A. Cowdrey, Luther C. Clarke and Henry Barling, this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Iowa, returnable to the September rule-day, it being Monday, the first day of September, A. D. 1873.

Witness the Hon. Nathan Clifford, sen. associate justice of the
176 Supreme Court of the United States, at Des Moines, this 22nd day of July, A. D. 1873, and of the Independence the ninety-eighth year.

[SEAL.] (S'g'd) GEORGE B. CORKHILL, *Clerk.*

MEMORANDUM.—The within-named defendant is notified that unless it enter its appearance in the clerk's office of said court at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against it as confessed, and a decree entered thereon accordingly.

[SEAL.] (S'g'd) GEORGE B. CORKHILL, *Clerk.*

177 And afterwards, to wit, on the 25th day of September, 1873, said subpœna was returned by the marshal of said district, and filed in said clerk's office, with his return of service endorsed thereon; which said return is in the words and figures following, to wit:

178 This writ came into my hands for service on the 22nd day of July, A. D. 1873, and I served the same on the within-named Ills. & Miss. Tel. Co. August 5th, 1873, by reading the same to E. E. Cooke, of the firm of Cook, Richman & Bruning, attys. of said Ills. & Miss. Tel. Co., and by delivering a true copy to him.

Also, on the 23rd of Aug., procured acceptance of service by J. Scott Richman, another member of said firm, at Davenport, in the county of Scott & State of Iowa.

PETER MELENDY,
U. S. Marshal.
A. BOWERS, *Deputy.*

Marshal's fees: Mileage, (175 miles,) $10.50; service on, 4.00; copy, 2.00—16.50.

(Endorsed:) Filed Sep. 25, 1873. George B. Corkhill, clerk.

179 Afterwards, to wit, on the 6th day of October, A. D. 1873, the same being rule-day in said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa. Rule-day, October 6, 1873.

W. S. GILMAN, N. A. COWDREY, ET AL., *vs.* THE ILL. & MISS. TEL. CO. } No. 417. Eq.

This day compts., by Jno. Fyffe, esq., and Messrs. Gatch, Wright & Runnells, their solrs., move the court for a default against the said defendant, and for an order for a decree pro confesso, and it being made to appear that due and legal service of the subpœna herein has been

made upon deft., and that said deft. has wholly failed to plead, answer, or demur to complts.' bill, it is therefore ordered that said motion be sustained; that a default be, and is hereby, entered against said defendant; that said complts.' bill be taken as confessed, and that a decree be entered thereon as prayed.

Attest:

GEORGE B. CORKKILL, *Clk.*

180 Afterwards, to wit, on the 14th day of October, A. D. 1873, the said defendants, by their attorneys, Mess. Cook, Richman & Bruning, file their motion to dismiss in said cause; which said motion is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa, October term, 1873.

W. S. GILMAN & OTHERS
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH Company & others. } In equity.

181 And now comes the defendant The Illinois and Mississippi Telegraph Company, by Cook, Richman & Bruning, its attorneys, and says that this court ought not to take further cognizance of this cause.

Because, it says, that it appears from the bill of complaint filed in this cause, and on the face thereof, that the plaintiffs are citizens of the State of New York, and that the said defendant The Illinois and Mississippi Telegraph Company is a citizen of the State of Illinois.

Wherefore said deft. prays judgment whether this court can or will take further cognizance of this cause, and that the same be dismissed.

(Signed) COOK, RICHMAN & BRUNING,
Attorneys for said Deft.

(Endorsed:) W. S. Gilman et al. vs. Ill. & M. Telegraph Co. Mo. to jurisdiction & to dismiss. Filed Oct. 14, 1873. George B. Corkhill, clerk.

182 Afterwards, to wit, on the 21st day of October, A. D. 1873, said complainants, by their said attorneys, filed in said clerk's office a motion to continue injunction in said cause; which said motion is in the words and figures following, to wit:

Motion to continue injunction.

In the circuit court of the United States, district of Iowa.

W. S. GILMAN AND N. A. COWDREY, trustees, &c.,
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH Company.

183 Come now the complainants and move the court for an order continuing the injunction heretofore granted herein by his honor Judge Love, in vacation, at chambers.

(Signed) JOHN FYFFE.
GATCH, WRIGHT & RUNNELLS,
Solrs. for Complst.

(Endorsed:) U. S. C. C. W. S. Gilman and N. A. Cowdrey vs. The Illinois and Mississippi Telegraph Company. Motion to continue injunction. Filed Oct. 21, 1873. George B. Corkhill, clerk. John Fyffe and Gatch, Wright & Runnells, for compt'lt.

184 On the same day, to wit, Oct. 21, 1873, the said respondents, by their said attys., file in said clerk's office their motion for a rule on complts. to file inj. bond; which said motion is in the words and figures following, to wit:

In the circuit court of the U. S. for district of Iowa.

W. S. GILMAN ET AL.
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH Company & others.

185 And now comes the deft. The Illinois and *and* Mississippi Telegraph Company, by Cook, Richman & Bruning, its attorneys, and moves for a rule on the plaintiffs to file a bond, as required by the order allowing an injunction in this case, instanter, & in default thereof that the suit be dismissed.

(Signed) COOK, RICHMAN & BRUNING,
Attys. for Defts.

(Indorsed:) 417. W. S. Gilman et al. vs. Ill. & Miss. Tel. Co. Motion for rule on plff. to file bond. Filed Oct. 21, 1873. George B. Corkhill, clerk. Cook, Richman & Bruning, attys. for defts.

186 On the same day, to wit, Oct. 21, the same being of the October term, 1873, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, October term, 1873, Tuesday, October 21st, 1873.

W. S. GILMAN & N. A. COWDREY ET AL.
vs.
THE ILLINOIS & MISS. TEL. CO. } No. 417. Eq.

This cause came on this day to be heard. Upon defts.' motion it is ordered that complaintants file an injunction-bond herein, with sureties to be approved by the clerk of this court, within three days from this date.

187 On the same day, to wit, Oct. 21, 1873, the said respondents, by their said attys., file in said clerk's office their answer in said cause; which said answer is in the words and figures following, to wit:

In the circuit court of the United State for the district of Iowa.

W. S. GILMAN & N. A. COWDREY, LUTHER C. Clarke & Henry A. Barling,
vs.
188 THE ILLINOIS & MISSISSIPPI TELEGRAPH Company and others.

And now comes the defendant The Illinois & Mississippi Telegraph

Company, by Cook, Richman & Bruning, its attorneys, and for answer to the bill & amended bill of complaint of the said plaintiffs, or unto so much thereof as it is advised it is material for it to answer to, answering, says:

1st. Admits the execution of the first and second mortgages in said bill mentioned and described.

2nd. Admits that this defendant obtained a judgment in this court against the said Des Moines Valley Railroad Company for the
189 sum of $23,734.10, as alleged in paragraph IX of said amended bill, and alleges that the whole amount thereof, with interest at 6 per centum per annum, is now due.

3rd. Admits that W. S. Gilman and N. A. Cowdrey, as trustees in said second-named mortgage, filed their bill of complaint, in the circuit court in and for the county of Polk and State of Iowa, against the said railroad company and others, including the trustees of said first mortgage, and this defendant to foreclose the second mortgage, and for a sale of said road, but denies that in said bill of complaint the appointment of a receiver was asked for.

4th. Admits that on 31st May, 1873, a decree was rendered by the circuit court in and for Polk County, Iowa, foreclosing said
190 second mortgage and ascertaining priorities of creditors, as alleged in the 12th paragraph of said amended bill of complaint.

5th. Admits that this defendant has caused execution to issue upon its judgment against said railroad company, rendered in this court on the 21st day of May, 1872; that said execution is or was in the hands of the proper officer, and that the same has been levied upon the earnings of said railroad by garnishment of officers and agents, and that said officers and agents are required to appear and answer to this court as garnishees.

6th. This defendant does not know, and, therefore, cannot admit or deny, whether the monies garnisheed consists solely of the earnings of said road for freight and passengers, but denies that the
191 business of said railroad as a common carrier will be materially hindered & delayed, to the detriment of the public and to the injury of the security of plffs., by such garnishment; denies that the earnings of said railroad are essential and necessary to the running and operating of said road.

Cannot admit or deny that said earnings are the only means that the said railroad company have with which to run and operate said road, but alleges that the decree of foreclosure alleged and referred to by plaintiffs in their bill of complaint provides means for running and operating said road and paying the officers and employees and all
192 others for labor, &c., other and different from the earnings of said road to the amount of $100,000, which amount, this defendant alleges, is sufficient to operate said road and pay expenses thereof for a long time.

And this defendant avers that the earnings of said road since this defendant attached or levied upon the same have been much more than sufficient to pay the expenses of operating the same, and that the nett earnings thereof, have been at least seven thousand dollars per month, and sufficient, as this defendant is informed and believes, to pay the whole amount of its judgment and interest.

And, further answering, this defendant says that the plaintiffs are not entitled to the injunction prayed for by them, because they say that the decree of foreclosure rendered by the circuit court in and for the county of Polk, in the State of Iowa, establishes the rights of the said plaintiffs

193 under the said mortgage, the relief to which they are entitled, and is the measure thereof.

That by said decree the payment of the said first mortgage is provided for in that it is paramount and prior to the said second mortgage, and it is nowhere alleged, shown, or pretended that the said railroad, or so much thereof as the first mortgage is a lien upon, is not sufficient in value to pay the same, nor that the said railroad company is insolvent and unable to pay any balance which might remain if the said railroad should not sell for an amount sufficient to pay the said first mortgage, and the court rendering said decree failed to find any insufficiency in the security, and was not asked to, and did not appoint a receiver to collect and account for the rents and profits of said railroad be-

194 tween the time of rendering the said decree and the time of sale thereunder, and under the said decree the said rents and profits cannot be applied towards the payment of said mortgage.

That the said second mortgage and the payment thereof is provided for, inasmuch as it covers the entire line of said railroad and is the first and only mortgage on so much of said road and its appurtenances as lies between the city of Des Moines, in Polk County, and Fort Dodge, in Webster County, and is a second mortgage on so much of said railroad as lies between the city of Keokuk, in Lee County, and the city of Des Moines, in Polk County, and in addition thereto is a first and only mortgage upon all the lands granted by the State of Iowa, in the

195 United States, to aid in the construction of said road. That in the petition for the foreclosure of said second mortgage there is no allegation that the security was insufficient or that the railroad company was insolvent, and no allegation that the rents & profits or earnings of said road were necessary to pay the said mortgage, and no receiver was asked for or appointed to collect and account for said earnings, but the said railroad by said decree was left in the hands of said railroad company, and no appropriation of the earnings thereof, from the time of rendering said decree until the purchaser thereunder should be entitled to the possession thereof, was asked for or made.

And this defendant shows that after the original decree was rendered foreclosing and merging the said mortgage, and after an execution

196 has been issued to enforce said decree by the sale of said railroad, this deft. caused an execution to be issued on its said judgment, and by virtue of said execution the earnings of said road were levied upon & attached as the property of said railroad company to satisfy the said execution.

That after the said earnings had been thus levied upon by the garnishment as aforesaid, the said plaintiffs recalled & caused to be returned the execution which had been by them issued to enforce and satisfy their decree. And at a term of the circuit court in & for Polk County, State of Iowa, subsequent to the term at which the original decree was rendered, the said plaintiffs, without filing any amended or supplemental petition and without giving any notice thereof, was allowed to, and did, amend their decree in many respects, against the objections of

197 defendant, which appeared by its attorney to object thereto, but upon the statement & showing of defendant that it had caused an execution to be issued upon its judgment, & had levied upon the earnings of said road, and had acquired legal right thereto.

The said amendments were allowed only upon the terms that they were to be subject to the rights of defendant thus acquired, and were not in any manner to effect said rights, and this deft. avers that the

original decree contained no clause appointing a receiver for any purpose.

And this deft. says that the said original decree giving effect to the liens of said mortgage to the extent asked for, and according to the views of the court rendering the same, of the extent thereof, was and is a legal satisfaction, release, & extinguishment of the said mortgages, and
198 the same was & is merged in said decree, so far as this defendant is concerned; and that the lien of the judgment of this defendant attached & became superior to any supposed lien of the plaintiffs upon the earnings of said road, if not at the moment the said original decree was approved and ordered to be entered of record by the said circuit court of Polk County, at least at the time of the levy of deft.'s execution thereon.

That when deft.'s execution was levied upon the earnings of said road the same were being rightfully & legally received by the said railroad company to & for its own use.

That the plaintiffs show no right or title thereto in their bill of complaint.

That plaintiffs are not authorized to sue or make complaint in behalf of the public.

199 That this defendant ought to be allowed to enforce its legal right to satisfy its judgment from the property of said railroad company not covered by the said original decree of foreclosure in favor of the plffs. and not in existence at the time of rendering said decree, but earned and acquired by said railroad company after the rendition of said decree.

200 And this defendant submits that the matters alleged in plffs.' bill of complaint are insufficient to give this court, as a court of equity, any cognizance thereof, and that the same may be tried and determined at law.

That plaintiffs are not entitled to any relief from a court of equity in respect thereto, and this defendant asks for the same benefit from so much of this defense as goes in bar of plaintiffs' claim of relief as if it had plead the same to plaintiffs' bill.

And deft. prays to be hence dismissed with its costs, &c.

COOK, RICHMAN & BRUNING,
Attys. for Deft., the Ills. & Miss. Tel. Company.

201 Circuit court of the United States, dist. of Iowa.

J. Scott Richman being duly sworn, says that he is one of the attorneys for deft. The Illinois & Mississippi Telegrap' Company; that he has read the foregoing answer, and knows the contents thereof, and that the matters & things therein stated are true in substance and fact, as he verily believes.

J. SCOTT RICHMAN.

Subscribed & sworn to before me by J. Scott Richman Oct. 21, 1873.
GEORGE B. CORKHILL, *Clk.*

(Indorsed:) 417. Gilman & Cowdrey vs. Ill. & Miss. Tel. Co. Deft.'s answer. Filed Oct. 21, 1873. George B. Corkhill, C.

202 And afterwards, to wit, on the 31st day of October, the same being of the October term, 1873, of said court, there appear in

the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, October term, 1873. Thursday, October 31st, 1873.

W. S. GILMAN, N. A. COWDRY, ET AL.,
vs.
THE ILLINOIS AND MISSISSIPPI TELEGRAPH CO. } No. 417. Eq.

This cause came on this day to be heard. Complainants appear by John Tyffe, esq., and Gatch, Wright & Runnels; and on their motion it is ordered that the time to file injunction-bond herein be extended to this day, and that complainants have leave to file such injunction-bond in the penal sum of thirty thousand dollars, with sureties to be approved by the clerk.

202[a] On the same day, to wit, Oct. 31, 1873, the said complainants filed in said cause an injunction-bond; which said bond is in the words and figures following, to wit:

202[b] *Injunction-bond.* (*Form* 31.)

Know all men by these presents that we, W. S. Gilman and N. A. Cowdrey, Luther C. Clark and Henry A. Barling, as principal, and Carlton H. Perry and George B. Smythe, as sureties, are held and firmly bound unto the Illinois & Mississippi Telegraph Company in the penal sum of thirty thousand dollars, for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and assigns, firmly by these presents.

The condition of the above obligation is such that whereas the said W. S. Gilman, N. A. Cowdrey, Luther C. Clark, and Henry A. Barling has filed in the office of the clerk of the circuit court of the United States, district Iowa, a petition praying that a writ of injunction be issued to restrain the said Illinois and Mississippi Telegraph Company from
202[c] levying or causing to be levied a certain writ of execution issued from said clerk's office, upon the property, rights, credit, effects, &c., of the said Des Moines Valley Railroad Company, or in any manner proceeding to collect their judgment against said Des Moines Valley Railroad Company rendered by the said circuit court of the United States;

And whereas the Hon. Jas. M. Love, U. S. district judge for Iowa, made an order allowing said writ of injunction:

Now, therefore, if the said W. S. Gilman, N. A. Cowdrey, Luther C. Clark, and Henry A. Barling shall well and truly pay to the aforesaid Illinois & Mississippi Telegraph Co. all damages and costs which said telegraph co. may sustain or that may be adjudged against the said petitioner by reason of the wrongful sueing out of said injunction, then this obligation to be void; otherwise in full force and virtue.

Witness our hands this 31st day of October, A. D. 1873.

202[d] W. S. GILMAN,
N. A. COWDREY,
LUTHER C. CLARKE,
HENRY A. BARLING,
Principal.

JOHN FIFFE,
C. H. PERRY,
GEO. B. SMYTHE,
Sureties.

Accepted and approved by me, George B. Corkhill, clerk of the circuit court of the United States, district of Iowa, this 31st day of October, A. D. 1873.

GEORGE B. CORKHILL,
Clerk.

(Endorsed:) Injunction-bond of W. S. Gilman, &c., to Illinois & Miss. Telegraph Co. Filed Oct. 31st, 1873. George B. Corkhill, clerk.

203 Afterwards, to wit, on the second day of March, the same being rule-day in said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, March rule-day, Monday, March 5, 1874.

GILMAN & COWDREY
vs.
ILLINOIS & MISSISSIPPI TELEGRAPH COMpany.

In above cause it is ordered that complainant have leave, and the
204 clerk is directed to file replication nunc pro tunc, as of date when same should have been filed under the rules.

Feb'y 25, 1874.

J. M. LOVE, *Judge.*

Attest:

GEORGE B. CORKHILL, *Clerk.*

205 Afterwards, to wit, on the 4th day of May, 1874, the said complainants by their said attorneys filed in said clerk's office their replication in said cause; which said replication is in the words and figures following, to wit:

In United States circuit court, district of Iowa.

GILMAN & COWDREY
vs.
ILLINOIS & MISSISSIPPI TELEGRAPH COMpany.

206 These replicants, saving and reserving unto themselves, now and at all times hereafter, all and all manner of benefits and advantage of exceptions which may be had or taken to the manifold insufficiencies of the said pleas, for replication thereunto says that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in law, and that the said answer of said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants.

That any other matter or things whatsoever in the said pleas contained, material or effectual in the law to be replied unto, and not herein & hereby well & sufficiently replied unto, confessed or avoided *as* true.

All which matters and things the repliants are and will be to aver, maintain, and prove as this honorable court shall direct; and
207 humbly pray as in and by their said declaration they have already prayed.

GATCH, WRIGHT & RUNNELLS,
& JOHN FYFFE,
Attys. for Complain'ts.

(Indorsed:) 417. Eq. Gilman & Cowdrey vs. Illinois & Miss. Telegraph Co. Replication. Filed May 4, 1874. George B. Corkhill, clerk.

208 Afterwards, to wit, on the 12th day of May, 1874, there was filed in said clerk's office a stipulation of parties in said cause, which said stipulation is in the words and figures following, to wit:

GILMAN & COWDREY
vs.
ILLS. & MISS. TEL. CO.

It is consented that depositions in above cause may be opened without order of court.

(Sgd.) GATCH, WRIGHT & R.,
& JNO. FYFFE,
For Complts.
J. SCOTT RICHMAN,
Atts for Defts.

209 Afterwards, to wit, on the 26th day of May, the same being of the May term, 1874, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, May term, 1874, Tuesday morning, May 26, 1874.

W. S. GILMAN & N. A. COWDREY ET AL.
vs.
THE ILLS. & MISS. TEL. CO. } No. 417. Eq.

This cause coming on this day, the same is submitted to the court upon the pleadings & proofs. The plaintiff to file briefs by 1st day of July next, and serve copy upon defendants, and the defendants are to file briefs in answer thereto by 20th July, and serve copy on compts., and complainants to file briefs in reply by August 1st, *scurity* copy on defendants, and then the clerk will send all papers briefs to the judges.

210 Afterwards, to wit, on the 5th day of June, 1874, the same being of the May term, 1874, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, May term, 1874, Friday, June 5, 1874.

W. S. GILMAN ET AL.
vs.
THE ILLINOIS & MISS. TELEGRAPH CO. } No. 417. Eq.

This cause coming on this day, it is ordered that the injunction or restraining order be continued in force pending the hearing of this case and until decree.

211 Afterwards, to wit, on the 20th day of October, the said defendants The Illinois & Miss. Tel. Co., by their said attorneys, filed in

said clerk's office their cross-bill in said cause; which said cross-bill is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

W. S. GILMAN & N. A. COWDREY, LUTHER C. Clarke, & Henry Barling,
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH COMpany & others.

212 And now comes the defendant The Illinois & Mississippi Telegraph Company, by leave of the court, and files this its cross-bill making the said W. S. Gilman & N. A. Cowdrey, Luther C. Clarke & Henry Barling, defendants thereto, asking that its answer in the above-entitled cause be allowed to stand as a cross-bill and for affirmative relief against the said W. S. Gilman, N. A. Cowdrey, Luther C. Clark, & Henry Barling upon the facts stated in its answer, and upon the proofs in the case, and that on final hearing in this cause the net earnings of said Des Moines Valley Railroad between the date of the original decree of foreclosure of said mortgages and the sale of said railroad under said decree, which amounts to the sum of $27,147.96, be applied toward the payment of its said judgment and interest up to this
213 date, which said judgment and interest amount to the sum of $27,160.53; and for such other and further relief as upon the case made it may be entitled to.

(Signed) COOK, RICHMAN & BRUNING,
Attys. for Ill. & Miss. Tel. Co.

Circuit court of the United States, district of Iowa.

J. Scott Richman, being sworn, says that he is one of the attorneys of the Illinois & Mississippi Telegraph Co.; that he has read the foregoing answer and knows the contents thereof, and that the matters therein stated are true in substance and fact, as he verily believes.

J. SCOTT RICHMAN.

Subscribed & sworn to by J. Scott Richman, before me Oct. 20, 1874.
GEORGE B. CORKHILL, *Clk.*

(Endorsed:) Filed Oct. 20, 1874. George B. Corkhill, clk.

214 And upon the trial of said cause certain documents and depositions were introduced and read in evidence in said cause; which said documents and depositions are in the words and figures following, to wit:

215 Circuit court of the United States, district of Iowa, *ss:*

To WILLIAM WILSON, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed and by these presents you are invested with full power and authority to examine Arthur Bridgman on his corporal
216 oath as a witness in a cause depending in the circuit court of the United States for the district of Iowa, wherein W. S. Gilman and N. A. Cowdrey et al. are plaintiffs, and The Illinois & Mississippi

Telegraph Company is defendant, on the part of the plaintiff, upon the interrogatories annexed to this commission. And therefore you are hereby commanded that at certain days and places, to be appointed by you for that purpose, you do cause the said Arthur Bridgman to come before you, and then and there examine him on oath upon the said interrogatories.

That you propound to the said witness the interrogatories and cross-interrogatories hereto annexed, and cause the same to be written
217 out and the answers thereto to be inserted immediately following the respective interrogatories. That you cause the whole to be read over to the witness, and the same to be subscribed by him, and duly sworn to before you. That you take said deposition in accordance with your certificate, which you will attach to the deposition of each separate witness, stating that it was subscribed and sworn to by the said witness at the time and place therein mentioned. That you then seal up the whole, including this commission and the interrogatories hereto annexed, all enclosed in one envelope, and return the same to the clerk of the United States circuit court at Des Moines, Iowa. That you endorse on the outside of said envelope, thus directed, the title of the cause in which the deposition is to be used, and that you
218 execute this commission with all convenient speed.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 23rd day of April, 1874, and in the 98th year of the Independence of the United States of America.

[SEAL.] Attest: GEORGE B. CORKHILL,
Clerk of United States Circuit Court, District of Iowa.

219 In the United States circuit court for the district of Iowa.

W. S. GILMAN AND N. A. COWDREY ET AL., plffs.,
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH COMPANY, deft.

220 To the above-named defendant, The Illinois & Mississippi Telegraph Company, or its attorneys, Cook, Richmon & Bruning:

You are hereby notified that on the 23rd day of April, 1874, the above-named plaintiffs will sue out a commission from the office of the clerk of said circuit court, directed to William Wilson, a commissioner appointed for that purpose, to take the deposition of Arthur Bridgman, at the office of the Keokuk & Des Moines Railway Company, in the city of Keokuk, Lee County, Iowa, upon written interrogatories, a copy of which is hereto annexed; and when so taken to be read in evidence upon the trial of the above-entitled cause on behalf of plaintiffs.

GATCH, WRIGHT & RUNNELLS,
With JOHN FYFFE,
Sols. for Plaintiffs.

221 Due and legal service of the forgoing notice accepted this 8th day of April, 1874.

COOK, RICHMAN & BRUNINGS,
Attorneys for Defts.

222 In the circuit court of the United States for the district of Iowa.

W. S. GILMAN AND N. A. COWDRY, ET AL., pltffs.,
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH COMPANY, defts.

223 Interrogatories to be administered to Arthur Bridgman, a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before the commissioner therein named, in the above-entitled cause, on the part of said plaintiffs:

Int. 1. What is your name, age, and occupation, and where do you reside?

Int. 2. Are you acquainted with the parties, or any of them, in the above-entitled cause?

Int. 3. What official relation, if any, have you sustained to the Des Moines Valley Railroad Company; and during what time did you sustain such relation?

224 Int. 4. What official relation, if any, do you sustain to the Keokuk & Des Moines Railway Company, and how long have you sustained such relation?

Int. 5. State whether or not the Keokuk & Des Moines Railway Company is, by purchase of that part of the road of the Des Moines Valley Railroad Company extending from Keokuk, in the county of Lee, to Des Moines, in the county of Polk, successor to said last-named company.

Int. 6. State, if you know, where the original of a mortgage or deed of trust executed by said Des Moines Valley Railroad Company, on or about the 16th day of October, 1868, to W. S. Gilman and N. A. Cowdry, trustees, &c., to secure the payment of four million six hun-

225 dred and ninety thousand ($4,690,000) now is?

Int. 7. If, in answer to the last preceding question, you shall say that the mortgage or deed of trust therein referred to is lost, or that you do not know where the same is, state where, if in existence, the same should be, and what search, if any, has been made therefor, and with what result.

Int. 8. If, in answer to either of the last two preceding interrogatories, you shall state that said mortgage or deed of trust is lost, state whether or not you have in your possession a true copy thereof; and if you say you have, mark the same "Exhibit A," and furnish it to

226 the commissioner to be attached as part of your answer to this interrogatory.

Int. 9. State, if you know, the source or sources from which all of the moneys in the hands of the agents of the Des Moines Valley Railroad Company, and bankers, and other persons upon whom process of garnishment has been served in the case of the Illinois & Mississippi Telegraph Company, defendant herein, against said Des Moines Valley Railroad Company in said U. S. circuit court, was received, and of what the same consists; and if you answer aye, state what you know as to the source from which the same was received, and your means of knowledge. State fully.

227 Int. 10. State what money, property, or credits, if any, are in the possession of any of the agents of said Des Moines Valley Railroad Company, or other person upon whom process of garnishment has been served in the case named in the last preceding interrogatory, other than the earnings of said Des Moines Valley Railroad Company

from freights and passengers; and if you answer that there are none other, state fully and particularly your means of knowledge with respect thereto.

Int. 11. State the source or sources from which said Des Moines Valley Railroad Company since the first day of June, 1873, has derived the means whereby it has been enabled to run and operate its
228 road, and from what other source or sources, if any, means might have been derived for that purpose, and what the fact is as to whether or not the money or other property garnished as aforesaid, was essential to the running and operating of said road.

Int. 12. State whether or not you have the means of knowing the amounts of the gross and net earnings respectively of said Des Moines Valley Railroad from the 31st day of May, 1873, to the 9th day of September, 1873, and if you answer that you have, state what said amounts were, and the application or disposition thereof.

Int. 13. State, if you can, what balances, if any, remain due and
229 unpaid to the first and second mortgage bondholders respectively of said Des Moines Valley Railroad Company after the sale of said company's road, and the application of the proceeds to the payment of the bonds held by them respectively.

Int. 14. If you have not already done so, in answer to previous interrogatories, state all of the sources from which the said Des Moines Valley Railroad Company, between the date of the decree in the case of W. S. Gilman et al., trustees, &c., against said railroad company and others, in the circuit court of Polk County, Iowa, to wit, the 31st day of May, 1873, and the date of sale under said decree, to wit, on the 17th day of October, 1873, was able to derive means with which to
230 run and operate its said road, and what means were in fact derived by it from such sources, and what application or disposition, if any, has been made of the means so derived.

Int. 15. State what means or resources said Des Moines Valley Railroad Company between the date of the decree and sale had, other than the property ordered and adjudged by said decree to be sold, with or from which to pay or secure, in whole or in part, the indebtedness secured by said first and second mortgages or deeds of trust, or any balance thereof after application of the proceeds of said property so ordered to be sold.

Int. 16. Do you know or can you set forth any other matter or
231 thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yes, set forth the same fully and at large in your answer.

(Endorsed:) Filed Apl. 23, '74. George B. Corkhill, clerk.

232 Deposition of witness produced, sworn, and examined at Keokuk, in the county of Lee and State of Iowa, before me, William Wilson, clerk of district and circuit courts in and for said county, in a certain case now pending in the circuit court of the United States at Des Moines, Iowa, between W. S. Gilman & N. A. Cowdry et al.
233 vs. The Illinois and Mississippi Telegraph Company, on the part of the plaintiffs.

ARTHUR BRIDGMAN, of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposeth and saith:

Direct interrogatory:

Int. 1. What is your name, age, and occupation, and where do you reside?

Ans. My name is Arthur Bridgman; my age is 65 years; occupation secretary of the Keokuk and Des Moine' Railway Company.

234 Int. 2. Are you acquainted with the parties, or any of them, in the above-entitled cause?

Ans. I am.

Int. 3. What official relation, if any, have you sustained to the Des Moines Valley Railroad Company; and during what time did you sustain such relation?

Ans. I am and have been secretary of the Des Moines Railroad Company for the last ten years or thereabout.

Int. 4. What official relation, if any, do you sustain to the Keokuk and Des Moines Railroad Company, and how long have you sustained such relation?

235 Ans. I am secretary and assistant treasurer of the Keokuk and Des Moines Railway Company since February, 1874.

Int. 5. State whether or not the Keokuk and Des Moines Railway Company is, by purchase of that part of the road of the Des Moines Valley Railroad Company extending from Keokuk, in the county of Lee, to Des Moines, in the county of Polk, successor to said last-named company.

Ans. The Keokuk and Des Moines Railway Company is by purchase the successor of the Des Moines Valley Railroad Company, as to the line of road between Keokuk & Des Moines.

236 Int. 6. State, if you know, where the original or a mortgage or deed of trust executed by said Des Moines Valley Railroad Company, on or about the 16th day of October, 1868, to W. S. Gilman and N. A. Cowdrey, trustees, and to secure the payment of four million six hundred and ninety thousand, (4,690,000,) now is.

Ans. I do not.

Int. 7. If, in answer to the last preceding question, you shall say that the mortgage or deed of trust therein referred to is lost, or that you do not know where the same is, state where, if in existence, the same should be, and what search, if any, has been made therefor, and with what success.

Ans. I suppose it should be in the hands of the mortgagee. I
237 do not know what search has been made for it.

Int. 8. If, in answer to either of the last two preceding interrogatories, you shall state that said mortgage or deed of trust is lost, state whether or not you have in your possession a true copy thereof, and if you say you have, mark the same "Exhibit A," and furnish it to the commissioner to be attached as part of your answer to this interrogatory.

Ans. I have a true copy, which I mark "Exhibit A" and deliver to the commissioner.

Int. 9. State, if you know, the source or sources from which all
238 of the monies in the hands of the agents of the Des Moines Valley Railroad, and bankers, and other persons upon whom process of garnishment has been served in the case of the Illinois and Mississippi Telegraph Company, defendants herein, against said Des Moines Valley Railroad Company, in said U. S. circuit court, was received, and of what the same consists; and if you answer aye, state what you know as to the source from which the same was received, and your means of knowledge. State fully.

Ans. All of the monies in the hands of the Des Moines Valley Railroad at the time of the levy of the execution by the Illinois and Mississippi Telegraph Company, and afterwards up to the time of the sale,

or in the hands of the bankers or other persons upon whom the process of garnishment were served in the case of the Illinois and
239 Mississippi Telegraph Company against the Des Moines Railway Company, in the U. S. circuit court, was received by them exclusively from the earnings of the road, and consisted solely and entirely of such earnings. I know this, because all money so received passed through my hands as the secretary and acting treasurer.

Int. 10. State what money, property, or credits, if any, are in the possession of any of the agents of said Des Moines Valley Railroad Company, or other persons upon whom process of garnishment has been served in the case named in the last preceding interrogatory, other than the earnings of said Des Moines Valley Railroad Company from freights and passengers; and if you answer that there are none other,
240 state fully and particularly your means of knowledge with respect thereto.

Ans. There are none. I know it, as I know the other, by being secretary and acting treasurer.

Int. 11. State the source or sources from which said Des Moines Valley Railroad Company since the first day of June, 1873, has derived the means whereby it has been enabled to run and operate its road, and from what other source or sources, if any, means might have been derived for that purpose and what the fact is as to whether or not the money or other property garnished as aforesaid was essential to the running and operating of said road.

241 Ans. Since the first day of June, 1873, the *the* Des Moines Valley Railroad Company derived the means whereby it was enabled to run and operate its road entirely from the earnings of the road and from no other source. I know of no other source from which it could have derived such means. The money garnished was necessary and essential to the running and operating the road.

Int. 12. State whether or not you have the means of knowing the amounts of the gross and net earnings respectively of said Des Moines Valley Railroad from the 31st day of May, 1873, to the 9th day of September; 1873; and if you answer that you have, state what said amounts were, and the application or disposition thereof.

242 Ans. I have the means of knowing the amount of the earnings of the Des Moines Valley Railroad from the 31st day of May, 1873, to the 15th day of September, 1873, the latter date being the day previous to the receiver taking possession of the road. The gross earnings for that period amounted to $218,887.77, and the net earnings amounted to $27,147.96. There was applied to the operating expenses for that period $191,639.81. Of the net earnings, (27,147.96,) $25,000 was paid on mechanic-lien judgments provided for in the decree in the foreclosure suit, the balance to the legitimate purposes of the road, on pay-roll due prior to the 1st of May.

Int. 13. State, if you can, what balance, if any, remain due and
243 unpaid to the first and second mortgage bondholders respectively of said Des Moines Valley Railroad Company after the sale of said compan*ie*'s road, and the application of the proceeds to the payment of the bonds held by them respectively.

Ans. There remained, and still is due, to the first-mortgage bondholders, after crediting the one million one hundred and seventy-five thousand dollars produced by the sale of the road and equipments, the sum of one million one hundred thirty-five thousand dollars, besides the accrued interest, and there remains and is still due the second bondholders,

one million eight hundred seventy-nine thousand dollars, exclusive of accrued interest.

244 Int. 14. If you have not already done so, in answer to previous interrogatories, state all of the sources from which said Des Moines Valley Railroad Company between the date of the decree in the case of W. S. Gilman et al., trustees, &c., against said railroad company and others in the circuit court of Polk County, Iowa, to wit, the 31st day of May, 1873, and the date of sale under said decree, to wit, on the 17th day of October, 1873, was able to derive means with which to run and operate its said road, and what means were in fact derived by it from such sources, and what application or disposition, if any, has been made of the means so derived.

Ans. Between the 31st day of May and 17th day of October the
245 said railroad company had no resources from which to derive means to run and operate the road, except the earnings received from week to week. I have already stated the earnings and operating expenses to 15th of September, and the application of the earnings.

The receiver's account, filed in the foreclosure suit, will show the earnings and their application from and after the 16th day of September, and I say that said receiver's account, which I have examined, contains a true account of said earnings and expenditures.

Int. 15. State what means or resources said Des Moines Valley Railroad Company between the date of the decree and the sale had, other than the property ordered and adjudged by said decree to be sold, with or from which to pay or secure in whole or in part the indebted-
246 ness secured by said first and second mortgages or deeds of trust. or any balance thereof, after application of the proceeds of said property so ordered to be sold.

Ans. Between date of decree and sale had no means and resources other than the property ordered and adjudged by said decree to be sold, with or from which to pay or secure in whole or in part the debt secured by the first and second mortgages, nor was there any balance after the application of the proceeds of the property so ordered to be sold; on the contrary, there were large balances remaining due on both mortgages.

Int. 16. Do you know, or can you set forth, any other matter or
247 thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yes, set forth the same fully and at large in your answer.

Ans. I do not know or cannot set forth anything that would be material in the case.

A. BRIDGMAN.

248 STATE OF IOWA,
Lee County, ss:

I, William Wilson, clerk of the district & circuit courts in and for Lee County, Iowa, do hereby certify that in pursuance of annexed commission and notice I examined Arthur Bridgman, the deponent, whose place of residence is in Keokuk, Lee County, Iowa, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined and his examination reduced to writing by me, who is neither of the parties, nor attorney of either, nor in anywise interested in the suit, and after being carefully by me read over to the said deponent, the same was sworn to and subscribed by the said deponent in my presence on the 5th
249 day of May, A. D. 1874, between the hours of 9 o'clock a. m. and

4 o'clock p. m. of said day at his office, in the city of Keokuk, Lee County, Iowa.

Given and certified to this 5th day of May, A. D. 1874, under my hand and seal official *this 5th day of May, A. D.* 1874.

[SEAL.] WM. WILSON,
Clk. District Court in and for Lee Co., Iowa.

(Endorsed:) Opened & filed May 12, 1874. George B. Corkhill, clk.

250 *Copy of bill of exceptions referred to in defts.' argument.*

In the circuit court, Polk County.

W. S. GILMAN AND N. A. COWDRY, TRUSTEES, plaintiffs,
vs.
251 THE DES MOINES VALLEY RAILROAD Company and others, defendants.

Be it remembered that upon the 21st day of May, 1873, this cause came on to be heard, on the motion of A. F. Dicks for a continuance, filed May, 1873, whereupon the court in consideration thereof overruled the same; and thereupon this cause coming on to be further heard in said court at the adjourned term thereof, held on said day, the plaintiffs, to make out their case, introduced in evidence—

1. The deposition of A. Bridgeman, taken by plaintiffs and filed in this court May, 1873.

2. The deposition of Wm. Leighton.

252 3. The deposition of N. A. Cowdry, taken and filed in this court May 19, 1873.

4. The deposition of Wm. S. Gilman, George C. Clarke, Thos. C. M. Paton, filed in this court May 10, 1873.

And upon the trial The Des Moines Valley Railroad Company, by its attorneys, Craig, and Clark & Barling, by their attorneys, Grant and Smyth, and Martin Flynn, Luke O'Brien, & Lawrence Guggerty, & Harman Marcy, by their attorneys, Nourse, Kauffman & Holmes, admitted in open court the execution of the second mortgage, dated 1st October, 1868, and the amount due upon the second-mortgage bonds, being the amount for which a decree in this case is rendered, and upon the foregoing evidence and admissions, and none other, plffs. rested their case.

253 And be it further remembered, that upon the trial of the issue presented in the cross-petition of Clark & Barling, the said Clarke & Barling introduced no testimony, except the admission of The Des Moines Valley Railroad Company, by its attorney, Craig, and of the plaintiffs, by their attorneys, and of Martin Flynn, Luke O'Brien, & Lawrence Guggerty, & Harman Marcy, by their attorneys, Nourse, Kauffman & Holmes, that the first mortgage, dated 16th February, 1857, had been duly executed, and that the amount for which the decree in this case is rendered was due upon the bonds secured by the said first mortgage, and the decree in favor of said Clarke & Barling was made upon said admission and upon no other evidence or testimony offered or produced by them upon the trial, nor were the bonds pro-

254 duced in court, or their loss or absence accounted for.

And be it further remembered, that upon the trial of the above-entitled action the defendant' Martin Flynn, Luke O'Brien, and Law-

rence Guggerty, and Harman Marcey offered in evidence the following documentary evidence, to wit:

Transcripts of judgments in their favor rendered by the circuit court of Webster County, for the amount named in the decree, and also establishing a mechanic's lien on said Des Moines Valley Railroad Company, and the said Des Moines Railway Construction Company and said plaintiffs and said Des Moines Valley Railroad Company conceding the priority of said lien for the amount named in the decree, and the
255 other defendants appearing herein, stating they did not resist said claim of lien on the part of said defendants under their lien, said defendants offered no further evidence as to their lien, which was all the testimony introduced by them in support of the cross-petition in the case.

And upon the foregoing admissions and evidence, and upon no other, the court rendered the decree for the plaintiffs in this cause, and ordered the sale of the mortgaged premises and the distribution of the proceeds in the manner and order named in the decree; to all of which A. F. Dicks, administrator of A. H. Stephenson's estate, and intervenor, and the defendant The Illinois & Mississippi Telegraph Company, at the time excepted.

256 Be it further remembered, that after the court had announced its decision, and the cause then being ready for a final decree, a form of decree was submitted to the court, (being the same decree signed by the court and entered of record in this cause,) to each and every part of which the defendant The I. & M. Telegraph Company, and the said A. F. Dicks, administrator of H. Stephenson, decd., intervenor, then and there excepted, and excepted specially—

1st. To the sufficiency of the evidence offered in the case, that the same did not warrant or authorize the decree in this, that neither the said deed of trust nor any of the bonds issued thereunder were produced or offered in evidence or their absence accounted for.

257 2nd. They excepted to so much of the decree as required the sale to be made subject to the payment of a sum not exceeding $100,000.00 for supplies and running expenses, and to pay the officers and employees of the road for services to be rendered before the said sale.

3rd. They excepted to so much of the decree as ordered the road to be sold as a unit or in gross.

4. To all that part of the decree allowing or directing the sheriff who should sell on special execution to receive anything but cash in payment of bid.

258 5th. To all that part of the decree that adjudged the equities of The I. & M. Telegraph Company to be inferior or junior to the said second mortgage to plaintiffs.

6th. To so much of the decree as authorized a sale without the right of redemption being reserved, and as orders the sale to be made without appraisement.

7th. To the entire decree, because the evidence shows the 2d mortgage to plaintiffs was issued without authority and void, and was executed in violation of law and void, and because the court had no right to enter a decree at this time under the state of the records and pleadings in this case.

259 8th. The said objecting parties also each severally excepted to so much of said decree as authorized or gives to the plaintiffs Gilman and Cowdry, trustees, and to the defendant The Des Moines

Valley Railroad Company the right to sell and dispose of the lands of the company prior to the execution sale under such decree.

9th. To so much of the decree as provides that no bid of less than two millon dollars shall be considered an adequate bid for the entire line of the road from Keokuk to Ft. Dodge.

And the court overruled each and every of said objections, and signed the decree in this cause, and ordered the same to be spread upon
260 the records; to all of which the said administrator of H. Stephenson's estate and the said Illinois and Mississippi Telegraph Company at the time excepted; and inasmuch as these facts do not otherwise appear of record, they ask that this bill of exception be signed by the court, which is done.

July 28th, 1873.

JOHN MITCHELL, *Judge.*

261 In the circuit court of the United States for district of Iowa.

W. S. GILMAN, N. A. COWDRY, LUTHER CLARKE, & Henry A. Barling, plffs.,
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH CO. ET al., defts.

262 It is hereby consented, stipulated, & agreed by and between the plffs. and the defts. The Illinois and Mississippi Telegraph Company, testified by the signatures of their respective solicitors hereto, that the following documents shall be admitted and received in evidence upon the trial of this cause as if the originals thereof had been produced and proved in the regular form, reserving all just causes of exception:

Copy of mortgage dated 1st October, 1868, made by the Des Moines Valley Railroad Company to W. S. Gilman and N. A. Cowdry.

Copy of decrees, original and amended, in the case of W. S. Gilman and N. A. Cowdry, trustees, vs. Des Moines Valley Railroad Company & others, rendered in the circuit court of Iowa in and for the
263 county of Polk.

Copy of petition in said cause and any amendments thereto.

And also any of the files, papers, or any of the records and proceedings in said cause up to and including the execution and returns thereon issued in the said cause, and either the original or copies may be used.

April 27, 1874.

JOHN FYFFE,
Plffs.' Sol.

264 *Stipulation that decree was made subject to rights of telegraph co.*

IN THE CASE OF GILMAN ET AL.
vs.
THE ILL. & M. TEL. COMPANY.

It is agreed that in the original decree there was no receiver appointed for any purpose, & that the amendment appointing a receiver was made subject to the rights of the telegraph co., & after the levy of its execution.

265

JOHN FYFFS,
Plffs. Atty.
J. SCOTT RICHMAN,
Atty. for Deft.

266 In circuit court of Polk County, Iowa.

By the honorable John Mitchell, in chambers, 30th Oct., 1873.

W. S. GILMAN & N. A. COWDRY, TRUSTEES,
vs.
THE DES MOINES VALLEY RAILROAD CO. ET AL.

267 *Entrys in circuit court for Polk Co.*

On motion of John Fyffe, attorney for the receiver, and on reading the decree and the affidavit of George B. Smythe, this day filed—

It is ordered that the said receiver do, out of the funds now in his hands as such receiver, retain and set apart the sum of thirty thousand dollars, to indemnify George B. Smyth and Carlton H. Perry against their liability on a certain injunction-bond to be executed by them as receivers in a suit now pending in the circuit court of the United States, wherein W. S. Gilman, N. A. Cowdry, Luther C. Clarke, and Henry A. Barling are plaintiffs and The Illinois & Mississippi Telegraph Co. & others are defendants.

$30,000 ordered to be set aside.

268 *Order confirming sale of first parcel of road.*

W. S. GILMAN AND N. A. COWDRY, TRUSTEES,
vs.
D. M. V. R. R. Co. ET AL.
No. 214, ch'y. Oct. 31, 1874.

Now comes Clarke & Barling, trustees for the first-mortgage bondholders, and ask the court to confirm the sale of the property named in the sheriff's return as sold under the first-mortgage bondholders to Hyman, Geer & Johnson, and that the said sherriff execute the deed of sale required by the decree upon the order of the attorneys of Clarke and Barling that they have have received of the purchasers the consideration named in the sherriff's return; and said motion is sustained, the said decree confirmed, & the deed is ordered to be executed upon the
269 order & receipt of plffs.' attys., and upon the payment of one-half of the costs herein into court.

270 W. S. GILMAN & N. A. COWDRY, TRUSTEES,
vs.
DES MOINES VALLEY R. R. COMPANY ET AL.
No. 214, ch'y. Oct. 31, 1874.

This cause came on to be heard on the motion of W. S. Gilman, trustee' et al., to *to* set aside the sale of the defendants' road, lying between Des Moines, Iowa, & Fort Dodge, Iowa, Craig & Collier appearing as attorney for The Des Moines Valley Railroad Company, & Polk, Hubbell & Goode appearing for the motion. The hearing of said motion was postponed until the 20 day of November, 1873.

It is further ordered that the sherriff of Polk County shall withhold a deed for said portion of said road from the persons claiming to have purchased the same, until the further order of this court.

271 It is further ordered that the time for compliance with bid by the purchaser of said portion of said road be extended to the same extent as the delay in hearing the motion filed for setting aside the sale. Craig & Collier appeared for the defendant The Des Moines Valley Railroad Company, and filed a motion to set aside the order in this cause

made October 31, 1873, confirming the sale of that portion of said road from the city of Keokuk to the city of Des Moines, in the State of Iowa, to Hyman, Geer & Johnson, and also to set aside sale of lands, last-named portion of said railroad. The hearing of said motion was continued to the 20th day of November, 1873, without prejudice to the
272 rights of the defendant The Des Moines Valley Railroad Company, & John Bertram & H. Scott Howell have leave to file petition of intervention.

273 GILMAN & COWDRY, TRUSTEES, *vs.* D. M. V. R. R. CO. ET AL. } No. 214, ch'y. Nov. 20, 1873.

Upon motion of Grant & Smith, attorneys for trustees of first-mortgage bondholders, Polk, Hubbell & Goode, attorneys for Gilman, Bliss, and others of the second-mortgage bondholders, Gatch, Wright & Runnells, & John Fyffe for trustees of second-mortgage bondholders, Nourse, Kauffman, & Holmes, attys. for Marcy & others, consenting, and on reading declaration of trust dated 13th Nov., 1873, signed by George B. Smyth, N. A. Cowdry, C. H. Perry, John Maxwell, & Wm. Leighton, directors of the Keokuk Northwestern Railroad Co., the bidders for the second parcel at the sale 20 October, it is ordered that the bid of the Keokuk Northwestern Railroad Co. for said second parcel of
274 $475,000 *to* be transferred to H. A. Johnston, George Bliss, & T. C. M. Patton, and that the time limited by the decree for the making of the deed of conveyance of said parcel by the sheriff, *to* be extended to the 1st day of December.

And it is further ordered, all said parties consenting, that the motions filed to set aside said sale to the Keokuk and Northwestern Railroad Company, and to remove George B. Smyth as receiver, be withdrawn and that the affidavit of , upon which same were grounded, be taken off the file.

And the said George B. Smyth, so consenting, it is ordered that he do file his report as receiver on or before the first day of the next regular term of the court.

275 And it is further ordered that George B. Smyth, the receiver, do so deposit the sum of $30,000, ordered to be set apart as an indemnity fund, by order of 30th October last, as well as any surplus realized remaining in his hands as such receiver exceeding $500.00, so as to make same productive and to be repaid at short notice, and that said deposit be made in the State National Bank, in Keokuk; that the motion mad e by Craig & Collier, to set aside the date of the first parcel to J. A. Johnson et. al., be withdrawn; that Luther C. Clarke & Henry A. Barling be entitled to the sum of one per cent. on the sum of $1,175,000, being the amount of the purchase-money of first parcel.

It is further ordered that the extension of time herein given for the compliance with the bid for the second parcel of the said railroad,
276 sold as aforesaid, and the execution and delivery of a deed as may be hereafter ordered to the parties, shall be without prejudice to the stipulation of the parties herein filed, signed in behalf of the parties to receive the benefit of said bid and in behalf of Marcy and others.

This decree and order is without prejudice to the right of A. F. Dicks, administra tor of the estate of H. Stephenson, deceased.

277 W. S. GILMAN & COWDREY, TRUSTEES,
vs.
THE DES MOINES VALLEY RAILROAD CO. ET AL. } No. 214 ch'y, Nov. 22, 1873.

This day this cause came to be heard upon the motion of Grant & Smith, attys. for the first bondholders to retax the costs of the sherriff herein; on consideration whereof the court overruled said motion, to which the said excepts.

And thereupon this cause came on to be heard upon the motion of the sherriff to retax the costs herein; on consideration whereof the court overruled said motion, to which the sherriff excepts.

And time is given to either party to prepare and file a bill of exceptions—parties have ten days from Jany. 6, 1874, to file bill of exceptions, by agreement of parties.

278 GILMAN & COWDRY, TRUSTEES,
vs.
D. M. V. R. R. CO. ET AL. } No. 214, ch'y. Jan'y 5, 1874.

In this cause the New York Warehouse & Security Co. have leave to file petition of intervention.

W. S. GILMAN & N. A. COWDRY
vs.
THE DES MOINES VALLEY R. R. CO. ET AL. } No. 214, ch'y. Jan'y 6, 1874.

Upon motion of John Fyffe, attorney for plffs., it is ordered that the plaintiffs be at liberty to issue special execution to the sherriffs of Van Buren County and Lee County, respectively, to sell the real estate
279 of said company mentioned in schedule B to the decree annexed.

And upon motion of John Fyffe, attorney for George B. Smyth, the receiver, it is ordered that the time for filing the receiver's account be extended to the 1st day of Feb'y, 1874.

280 GILMAN & COWDRY
vs.
D. M. V. R. R. CO. ET AL. } No. 214, ch'y. Feb'y 4, 1874.

It is hereby ordered that J. H. McClelland, clerk of the circuit court, be appointed referee to examine the report of George B. Smyth, special receiver, herein and to report his findings to this court, and the parties to this suit have twenty days in which to file objections to the receiver's report; and it is further ordered that the receiver file a verified statement setting forth any outstanding claims made on him for damages, drawbacks, or otherwise.

1st. Special execution issued to sh'ff of Polk Co., Iowa, June 25, 1873, and returned wholly unsatisfied Sept. 1st, 1873.

281 2nd. Special execution issued to sh'ff of Polk County, Iowa, Sept. 16, 1873, and not yet returned.

282 STATE OF IOWA,
Polk County, ss:

I, J. H. McClelland, clerk of the circuit court of the State of Iowa in and for said county of Polk, do hereby certify that the foregoing is a true, full, and complete transcript of the journal entries of which they propose to be made in the above-entitled cause, and of the issuance of the

first special execution and return thereof, and of the issuance of the second special execution as fully and completely as the same appear of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Des Moines this 12th day of May, A. D. 1874.

[L. S.] J. H. McCLELLAND, *Clk.*

283 *No. 1.—Motion to amend decree.*

Polk circuit court.

GILMAN & COWDRY
vs.
THE DES MOINES VALLEY RAIL COMPANY & others.

Now comes Clarke & Barling, by their attorneys, and move for a new trial or to modify the decree in this cause, because—

1st. The decree requires the whole property to be sold as an entirety; whereas the two mortgages cover different parcels of property; part of the property included in the last mortgage is not included in the first.

2nd. Because the decree requires the officer who is directed to sell the property to receive no bid for less than two millions of dollars on the whole property, part of which is not in the first mortgage.

GRANT & SMITH,
For Clarke & Barling.

284 *No. 2.—Release of right to redeem by R. R. co.*

In circuit court of Polk County, Iowa, Sept. term, A. D. 1873.

W. S. GILMAN, N. A. COWDRY, TRUSTEES, &C.,
vs.
THE DES MOINES VALLEY R. R. CO. & OTHERS.

It is hereby stipulated by the Des Moines Valley Railroad Company, one of the defendants in the above-entitled cause, that upon the sale of the mortgaged property under the decree and modified decree in this case, *that* the sh'ff shall put the purchaser into immediate possession of the said mortgaged property so sold, and said defendant hereby stipulates to surrender possession of same to such purchasers, and said defendant hereby waives all right of redemption (if any)
285 which it may have from such sale under such decree and modified decree.

J. H. CRAIG,
Attorney for the Des Moines Valley R. R. Company, Defendant.

286 STATE OF IOWA,
Polk County, ss:

I, J. H. McClelland, clerk of the circuit court for the State of Iowa, in and for said Polk County, do hereby certify that the foregoing is a true, full, and complete transcript of the bill of exceptions filed in the above-entitled cause by The Illinois & Mississippi Telegraph Company, and of the motion in the same cause for a new trial & modification of the decree filed by Clarke & Barling, per Grant & Smith, attys., and

also of the stipulation for possession and waiver of the right of redemption by J. H. Craig, attorney for the Des Moines Valley Railroad Company, defendants, as fully and completely as they appear of record in my office.

287 In witness whereof I have hereto set my hand and the seal of said circuit court at Des Moines, Iowa, this 20th day May, A. D. 1874.

[L. S.] J. H. McCLELLAND, *Clerk.*

288 DES MOINES VALLEY RAILROAD.

Copy of decree of foreclosure and sale. Entered May 31st, 1873.

Proposed alterations in italics or [ ].

289 In circuit court of Polk County, Iowa, January term, A. D. 1873.

W. S. GILMAN AND N. A. COWDREY, TRUSTtees,
vs.
THE DES MOINES VALLEY RAILROAD
290 Company, Luther C. Clarke, Henry A. Barling, trustees, D. B. Moses, S. S. Walkley, Fairman Rogers, and F. A. Dick, executors of the estate of Evans Rogers, deceased; Wm. M. Watts, Martin Flynn, Luke O'Brien, and Lawrence Gugerty, Harman Marcy, James G. Hamilton, The Des Moines Navigation and Railroad Company, Henry Arny, John Webber, Morris K. Jessup, J. V. Spader, Edward Savage, The Illinois and Mississippi Telegraph Co., B. F. Rose, admr. of C. O. Rose, deceased, and A. F. Dicks, admr. of the estate of H. Stephenson, deceased.

No. 214, in chancery. May 31, 1873.

This cause coming on to be heard at this term, to wit, on the
291 31st day of May, A. D. 1873, upon the pleadings and proofs and admissions of parties in open court, except The Illinois and Mississippi Telegraph Co. and F. A. Dicks, administrator of H. Stephenson, deceased, who made no admission. Plaintiffs appearing by Withrow, Gatch, Wright, and John Fyffe, attorneys; Luther C. Clarke and Henry A. Barling, trustees, and S. S. Walkley appearing by Grant and Smith; Martin Flynn, Luke O'Brien, Lawrence Gugerty, and Harmon Marcy by Nourse, Kauffman & Holmes, their attorneys; The Illinois and Mississippi Telegraph Co., by Cook, Richmond & Bruning, attorneys; F. A. Dicks, administrator of the estate of H. Stephenson, deceased, by Polk, Hubbell & Goode; and The Des Moines Valley Railroad Company by Craig & Collier, its attorneys; and it appearing to the court that D. B. Moses, Fairman Rogers, F. A. Dicks, executor of the estate of Evans Rogers, deceased, William M. Watts, Henry Arny, John Webber,
292 Morris K. Jessup, Edward Savage, J. V. Spader, B. F. Rose, administrator of the estate of C. O. Reese, deceased, have been duly and legally served with notice of the pendency of this action as required by law, and they failing to appear, it is therefore ordered by the court that a default be, and *and* the same is hereby, entered against each of said defendants. And all of said parties consenting to a trial by the court

and waiving a jury, except F. A. Dicks, administrator of Harry Stephenson, deceased, and the cause having been argued by counsel upon full consideration thereof, the court doth find—

I. That there is due and owing to Luther C. Clarke and Henry A. Barling, as trustees, the sum of two millions seven hundred and twenty thousand four hundred ($2,720,400.00) dollars, principal and interest, up to the 1st day of June, A. D. 1873, being the amount due and unpaid on the bonds secured by the mortgage made and executed by the said railroad company, then called the Keokuk, Fort Des Moines and Minnesota Railroad Company, to Luther C. Clarke and Samuel R. Curtis, trustees, &c., dated 16th Feb'y, 1857, *being* $2,310,000, *for the principal of such bond, and* $410,400 *for the interest accrued thereon from April 1st*, 1871, *to June 1st*, 1873, and that the said mortgage is the first lien upon that part of the railroad of the said defendant The Des Moines Valley Railroad Company, *extending from the commencement thereof in* the city of Keokuk *to the original terminus* thereof in the city of Des Moines, in the State of Iowa, *with all the appurtenances and franchises thereto belonging or appertaining, and upon the real estate of said company, mentioned in Schedule B, to this decree annexed, and upon such proportion of the rolling-stock or equipment, tools, machinery, and other personal property mentioned in Schedule A to this decree annexed, and of any and all other personal property belonging to said railroad company as shall correspond with the proportion which the length of the said line of railroad, from Keokuk to Des Moines, covered by said first-mortgage lien, bears to the length of the entire line of said railroad from the commencement in Keokuk to the terminus in Fort Dodge.*

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II. That there is due to S. S. Walkley the sum of thirty-five hundred and sixty-three and $\frac{80}{100}$ ($3,563.80) dollars, being the amount of debt and interest up to the first day of June, 1873, due upon a certain judgment recovered by him in the circuit court of the United States for the district of Iowa, against the said railroad company, on the 30th day of May, 1868, and that the same is a lien upon the entire property of the said railroad company, second in order of priority to the *above-declared* lien of said Luther C. Clarke and Henry A. Barling upon that portion of said road *extending from* Keokuk *to* Des Moines, *with the appurtenances and franchises thereof, and said real estate mentioned in Schedule B, and the aforesaid proportion of rolling-stock and other personal property.*

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III. There is due to Martin Flynn the sum of eight thousand and thirty-two and $\frac{58}{100}$ ($8,032.58) dollars, for debt & interest up to the 1st day of June, 1873, being the amount due on a certain judgment for a mechanic's lien, recovered by the said Martin Flynn in the district court of Webster County, against the said Des Moines Valley Railroad Company on the 13th day of March 1872.

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IV. That there is due to Harmon Marcy the sum of twenty-seven thousand seven hundred and eighty-nine and $\frac{43}{100}$ ($27,789.43) dollars, being the amount for debt and interest to the 1st day of June, A. D. 1873, due to him on a certain judgment for a mechanic's lien, recovered by him in the district court of Webster County against said railroad company on the 13th day of March, A. D. 1872.

V. That there is due to Luke O'Brien and Lawrence Gugerty the sum of twenty thousand and twenty-one and $\frac{91}{100}$ ($20,021.91) dollars, being the amount of debt with interest up to June 1st, 1873, due on a certain judgment for a mechanic's lien recovered by them in the district court of Webster County against said railroad company on the 13th day of March, A. D. 1872, and that said sums

297 so found due to Martin Flynn, O'Brien, Gugerty, and Harmon Marcy, respectively, are in equal priority, and are first liens on that part of defendant's road in Webster County.

VI. That there is due from the defendant The Des Moines Valley Railroad Company to plaintiffs N. A. Cowdry and W. S. Gilman, trustees, &c., the sum of two million nine hundred and seven thousand two hundred and ninety-three and $\frac{33}{100}$ ($2,907,293.33) dollars, being the amount due and unpaid on the bonds of said railroad company for principal and interest up to the first day of June, A. D. 1873, secured by said second mortgage, executed by the said railroad company to the said N. A. Cowdry and W. S. Gilman, trustees, &c., dated Oct. 1, 1868, and conveying the same property as is included in the said first-
298 mentioned mortgage, together with a further portion, being the remainder of said railroad extending from the city of Des Moines to Fort Dodge, in said State, together with all the lands which then had been or should thereafter be donated, or granted by, or in any other manner acquired from the United States, or the State of Iowa, to aid in building said railroad, or any part of it; and also all lands the property of said company not specially required for its traffic; and that the same is a lien upon the entire of said lands so granted as aforesaid to aid in the building of said road first in priority, and is a lien upon that part of said railroad lying between Des Moines and Fort Dodge, first in priority, but subject nevertheless and puisne as to that part of the railroad lying in Webster County; to the said sums so found due to Martin Flynn, Luke O'Brien, Lawrence Gugerty, and Harmon Marcy,
299 respectively; and that said sum so found due to the said W. S. Gilman and N. A. Cowdry, trustees, is also a lien upon the said rolling-stock, lands, property, and franchises lying between Keokuk and Des Moines, next in priority to the said sums so found due to Luther C. Clarke and Henry A. Barling and S. S. Walkley, respectively.

VII. That there is due to the Illinois and Mississippi Telegraph Company the sum of twenty-five thousand one hundred and eighty-five and $\frac{76}{100}$ ($25,185.76) dollars for debt and interest up to the 1st day of June, 1873, on a judgment recovered by it against the said railroad company, in the circuit court of the United States for the district of Iowa, on the 24 day of May, A. D. 1872, and which judgment is a lien upon the property of the said railroad company, puisne and subject to all the
300 liens heretofore mentioned.

VII. That there is due to said W. S. Gilman and N. A. Cowdry, for their services as trustees, in accordance with the terms of said mortgage, the sum of two thousand one hundred and sixty-eight ($2,168.00) dollars, the particulars of which are set forth in Schedule D, and made part hereof, which is a lien on the property of said railroad company, equal in priority to the sums so found due on the said mortgage.

And the court doth further find that the railroad of said defendant The Des Moines Valley Railroad Company consists of the road-bed and track of said road, extending from the city of Keokuk to the city of Fort Dodge, in the State of Iowa, and of certain rolling stock and other personal property, embracing all those described and set
302 out in Schedule A, appended to and forming part of this decree, and also certain lands and lots *not* used in the operation of and appurtenant to said railroad, embracing all those particularly described in schedule marked "B," appended to and forming part of this decree. That the lands owned by said company and not constituting a part of its railroad are particularly described in Schedule C, which is annexed to and constitutes a part of this decree.

Now it is ordered, adjudged, and decreed that the said defendant The Des Moines Valley Railroad Company do, within ten days, pay and satisfy the several amounts hereinbefore found to be due to the parties aforesaid, respectively, in full, with their costs of this suit; and that in default of such payments a special execution shall issue on the
302 requisition of plaintiffs or their solicitors, *or on the requisition of said Clarke and Barling or their solicitors*, directed to the sherriff of Polk County, Iowa, commanding him to sell, in the manner prescribed by law, the entire railroad of said company, *with the appurtenances and franchises thereof*, embracing all its real and personal property described in Schedules A and B, *and to this other decree annexed;* and all other personal property owned by said company and used in the operation of its said road, *and including all that is included in the first and second parcels hereinafter described*, or so much thereof as shall be necessary to pay the several claims above adjudged to be due and unpaid, and then remaining unpaid.

That said sale be made by said sherriff in two seperate parcels,
303 as follows, viz: The first parcel shall embrace all and singular that portion of the railroad of the Des Moines Valley Railroad Company extending from the commencement thereof in the city of Keokuk to and including the original terminus and depot thereof in the city of Des Moines, as such terminus existed previous to the extension made of said railroad from Des Moines to Fort Dodge, including the roadway and right of way thereof, and the superstructure, railway, and rails thereon, and the bridges, viaducts, culverts, fences, stations, depot-grounds, station-houses, depot buildings, and erections, and all other the appurtenances and franchises belonging or appertaining to the said line of railroad extending from the commencement in Keokuk to the said original terminus and depot in Des Moines; and also all the real estate of said company mentioned in Schedule B to this de-
304 cree annexed; and also such undivided share and proportion of the rolling-stock or equipment, tools, machinery, and other personal property mentioned in Schedule A to this decree annexed; and of any and all other personal property belonging to the said Des Moines Valley Railroad Company as shall correspond with the proportion which the length of the said line of the railroad between its commencement in Keokuk and such original terminus in Des Moines bears to the whole length of said line of railroad from the commencement in Keokuk to the terminus in Fort Dodge; that is to say, in the proportion which one hundred and sixty-two bears to two hundred and forty-seven.

[And the *second parcel* shall embrace all and singular that por-
305 tion of the railroad of the Des Moines Valley Railroad Company extending from the said original terminus in the city of Des Moines, which is the boundary of the first parcel, to the present terminus of said railroad in the town of Fort Dodge, including the roadway and right of way thereof, and the superstructure, railway, and rails thereon, and the bridges, viaducts, culverts, fences, stations, depot-grounds, station-houses, depot buildings and erections, and all other the appurtenances and franchises belonging or appertaining to the said line of railroad extending from said original terminus in Des Moines to the present terminus in Fort Dodge; and also such undivided share and proportion of the rolling-stock or equipment, tolls, machinery, and other personal property mentioned in Schedule A to this decree annexed, and of any and all other personal property belonging to the said Des Moines
306 Valley Railroad Company as shall correspond with the proportion which the length of the said line of railroad from the original

terminus in Des Moines to the terminus in Fort Dodge bears to the whole length of said line of railroad from the commencement in Keokuk to the terminus in Fort Dodge; that is to say, in the proportion which eighty-five bears to two hundred and forty-seven.

[And in case the first and second parcels shall be purchased by different purchasers, who shall not agree between themselves in respect of the actual partition and division between them of the rolling-stock or equipment, toll, machinery, and other personal property so purchased by them in undivided shares, it shall be, and hereby is, referred to , who is hereby appointed special master for the
307 purpose, to make a fair and equitable partition and allotment of such rolling-stock or equipment, tools, machinery, and other personal property between the said respective purchasers of the first and second parcels, assigning to each of them a designated portion thereof, in severalty, corresponding with the proportionate value of his or their undivided share of the whole, so purchased, and to report to the court such partition and allotment, with a designation of the particular items alloted to each party, upon the confirmation of which report by the court, after notice to both said parties, each of them shall become and be thenceforth entitled in severalty to the articles or items so assigned to him or them, in lieu and stead of the undivided share originally embraced in the parcel by him or them purchased.]

308 And if the proceeds of said sale *as hereinbefore directed* shall not be sufficient to pay each and all of said sums adjudged to be due and unpaid in full, then, and in such case, it is ordered that special execution be issued, directed respectively to the several sherriffs of the counties in which the real estate, described in Schedule C, is located, commanding the sale of the same in the manner prescribed by law, *and the net proceeds of such sale shall be paid by said sherriff* to said *Cowdry and Gilman, trustees, to be by them distributed to and among the bondholders entitled thereto, in accordance with the provisions of said mortgage or trust-deed to said Cowdry and Gilman, dated October 1st*, 1868.

And it is further ordered that the purchaser at said sale of the *rail-*
309 *road* of said company shall take the same subject to the *unpaid* claims, *if any*, of the officers and employees of the road, and all others, for labor in the operation of said railroad, *from the time of the first publication of the sherriff's notice of sale of said railroad under this decree up to the time of the said sherriff's sale* of said *railroad* to an amount not exceeding one hundred thousand dollars, ($100,000.00.)

But in order to provide funds for the payment of these claims, and avoid as far as may be the imposition of such burthen upon the purchaser of said railroad, it is ordered that George B. Smith be, and he is hereby, appointed special receiver of all the income and earnings of said railroad during the said period, between the first publication of said sherriff's notice of
310 *sale of said railroad and the making of said sherriff's sale thereof, with absolute right and power to such special receiver to take and receive all such earnings and income during said period, and forthwith dismiss and remove any and every officer or employee of said railroad company who shall neglect or refuse to pay over to him forthwith, upon request, any such earnings or income, and to appoint another person in his place; and said special receiver shall apply such earnings and income by him received, in the first place, to the payment of the current expenses of operating said railroad and to the purchase of necessary supplies to be used in operating said railroad during said period, and shall pay over any surplus to said railroad company or in pursuance of its direction.*

And it is further ordered that until the said sale the said W.

S. Gilman and N. A. Cowdry, as such trustees, and the said Des Moines Valley Railroad Company, shall be at liberty to sell and convey any of the lands *mentioned in Schedule C, to this decree annexed*, not used in the operation of said railroad and described in schedule, so ordered to be sold in the manner and upon the terms prescribed in the mortgage executed to them in redemption of the bonds secured by said mortgage so executed to them; and that on or before the days of such sales they shall file in this court a schedule, to be verified by them or thier agent or attorneys, setting forth the lands then remaining unsold, and which shall be the lands then to be sold in this matter, and that they shall make a report to this court of all the lands sold and of all bonds redeemed prior to the sale.

[And it is further ordered, adjudged, and decreed that the proceeds of the several sales of said first and second parcels hereinbefore directed to be made by said sherriff shall be applied and disposed of by him in the manner following, to wit:

From the proceeds of the sale of the first parcel, as above described and designated, he shall pay, in the first place, one-half of the taxed costs of the plaintiffs in this suit, and of the defendants Clarke and Barling, the cross-plaintiffs, and one-half of the costs and expenses of the said sale of the railroad and appurtenances, not embracing the costs of selling the lands mentioned in Schedule C, and shall then apply the net proceeds of the sale of said first parcel, extending from Keokuk to Des Moines as aforesaid, or so much thereof as shall be requisite therefor, to the payment to said Clarke and Barling, as trustees, of the sum of two millions seven hundred and twenty thousand and four hundred dollars, above adjudged to be due to them, together with interest thereon at the rate of seven per cent. per annum from the first day of June, eighteen hundred and seventy-three, until paid, or so much thereof as the net proceeds of said first parcel shall suffice to pay; and if, after full payment to said Clarke and Barling, trustees, of the principal and interest aforesaid, there shall be a surplus of the proceeds of said first parcel, said sherriff shall add such surplus to the net proceeds of the said second parcel above described and designated, and shall apply and dispose of the same in like manner as hereinafter provided in respect of the proceeds of said second parcel.

And it is further ordered and decreed that, in the settlement by the purchaser or purchasers of the above-described or designated first parcel of the sum by him or them bidden for such parcel, the said sherriff shall receive, in lieu of cash from such purchaser or purchasers, any of the outstanding and unpaid bonds or coupons issued under and secured by the mortgage in the pleadings mentioned, dated Feb'y 16, 1857, made by the Keokuk, Fort Des Moines and Minnesota Railroad Company, now the Des Moines Valley Railroad Company, to Luther C. Clarke and Samuel R. Curtis, trustees, reckoning such bonds or coupons, for the purpose of their receipt in lieu of cash, at the amount of the principal and interest properly receivable thereon by the holders thereof, respectively, from said Clarke and Barling, as trustees for such holders' shares of the net proceeds of sale of said first parcel, whereon said bonds constitute the first lien, as aforesaid.

And it is further ordered that, from the proceeds of the sale of the second parcel, as above-described and designated, the said sherriff shall pay, in the first place, one-half of the taxed costs of the plaintiffs in this suit, and of the defendants Clarke and Barling, the cross-plaintiffs, and one-half of the costs and expenses of the said sale of the said railroad and appurtenances, not embracing the costs of selling the lands mentioned in Shedule C, and shall then apply the net

proceeds of the sale of said second parcel, or so much thereof as shall be requisite therefor, as follows, viz:

[First. To the payment of the sum above adjudged to be due to S. S. Walkley upon his judment, viz:

The sum of thirty-five hundred and sixty-three dollars and eighty cents, together with interest from June first, eighteen hundred and seventy-three, upon the principal of said judgment.

[Second. To the payment of the sums above adjudged to be due to Martin Flynn, Harmon Marcy, Luke O'Brien, and Lawrence Gu-
317 gerty, respectively, upon their said judgments for mechanic's liens, viz: eight thousand and thirty-two dollars and fifty-eight cents to Martin Flynn; twenty-seven thousand seven hundred and eighty-nine dollars and forty-three cents to Harmon Marcy; and twenty thousand and twenty-one dollars and ninety-one cents to Luke O'Brien and Lawrence Gugerty, together with interest from the first day of June, eighteen hundred and seventy-three, upon the principals of the said judgments of said Flynn and Marcy and O'Brien and Gugerty.

[Third. To the payment to said S. W. Gilman and N. A. Cowdry of the said sum of two thousand one hundred and sixty-eight dollars, above adjudged to be due to them for their services as trustees.

318 [Fourth. To the payment to said W. S. Gilman and N. A. Cowdry, as trustees, of the sum of two millions nine hundred and seven thousand two hundred and ninety-three dollars and thirty-three cents., above adjudged to be due to them, together with interest thereon at the rate of seven per cent. per annum from the first day of June, eighteen hundred and seventy-three, until paid, or so much thereof as the net proceeds of said second parcel shall suffice to pay.

[And it is further ordered and decreed that in the settlement by the purchaser or purchasers of the above-described and designated second parcel, of the sum by him or them bidden for such parcel, the said sherriff shall receive in lieu of cash from such purchaser or pur-
319 chasers any of the outstanding and unpaid bonds or coupons issued under and secured by the mortgage in the pleadings mentioned dated October 1, 1868, made by the Des Moines Valley Railroad Company to W. S. Gilman and N. A. Cowdry, as trustees, reckoning such bonds or coupons for such purpose of their receipt in lieu of cash, at the amount of principal and interest properly receivable thereon, by the holders thereof, respectively, from said Gilman and Cowdry as trustees, for such holders' shares of the net proceeds of sale of said second parcel remaining after the discharge of the sums above directed to be paid out of the proceeds of said second parcel in priority over such bonds.

320 And it is further ordered that such of the said bonds issued under and secured by the said mortgage to Clarke and Curtis, and under the said mortgage to Gilman and Cowdry, respectively, as shall be delivered to said sherriff, under the foregoing provisions of this decree, towards settlement of the purchase-money of the respective sales of said first and second parcels under said decree, shall forthwith, upon such delivery, be cancelled or have endorsed thereon a statement of the amount paid upon the same out of the proceeds of such sale, and shall be thereupon filed by said sherriff with the clerk of this court or be returned by him with such cancellation or endorsement of payment thereon to the parties from whom he shall receive them, and the amounts at which such bonds shall be received in payment for either of such
321 first and second parcels respectively, in pursuance of the foregoing provisions, shall be deemed and reckoned as a payment upon

account of the sums hereinbefore adjudged to be paid to the trustees of the mortgages securing such bonds.

And it is further ordered that, upon payment over by said sherriff to said Clarke & Barling, trustees, and to said Gilman & Cowdry, trustees, respectively of such portions of the proceeds of said sale of said first and second parcels, received by said sherriff from the purchasers thereof, not in bonds, but in cash, as shall be payable to such trustees respectively in virtue of the foregoing provisions of this decree, for the accounts and benefit of the holders of the bonds and cou-
322 pons not turned in and delivered over to the sherriff towards paying the purchase-money, the said Clarke and Barling, trustees, and the said Cowdry and Gilman, trustees, shall at the time of receiving such cash payment from the sherriff, produce and exhibit to him such of the outstanding and unpaid bonds and coupons secured by the mortgage, wherein they are trustees respectively, to or towards the satisfaction whereof the amounts of cash so paid to said trustees, shall be properly applicable as shall be furnished or delivered for such purpose to said trustees by the holders of such bonds and coupons respectively, and such bonds and coupons thus produced to said sheriff in pursuance of the provision last aforesaid shall forthwith, upon such produc-
323 tion, be cancelled or have endorsed thereon the amount paid upon the same out of the proceeds of such sale, and be thereupon returned by said sheriff with such cancellation or endorsement of payment thereon to the parties producing the same to him.

[And it is further ordered that, in order to provide for the due eventual payment to the parties entitled thereto of such portions of the cash proceeds of said sale as shall be properly payable to the holders of such of the outstanding and unpresented bonds and coupons secured by said respective mortgages to Clarke & Barling, trustees, and to Cowdry and Gilman, trustees, as shall not be turned in and used towards
324 paying the purchase-money of the premises and property sold under this decree, nor furnished and delivered by the holders thereof to the trustees, and thereupon exhibited by said trustees to the sherriff as aforesaid, such amount of the net cash proceeds of said sale as shall be properly payable to the holders of such outstanding and unpresented bonds and coupons for their respective shares of the net proceeds of said sale shall, immediately upon the payment of such amount by the sherriff to the trustees, under the foregoing provisions of this decree, be deposited in the United States Trust Company of the city of New York such part thereof as shall appertain to such outstanding and unpresented bonds and coupons secured by the mortgage to Clarke and Barling, being so deposited in said trust
325 company to the joint credit of said Clarke and Barling as trustees, and such part thereof as shall appertain to such outstanding and unpresented bonds and coupons secured by the mortgage to Cowdry and Gilman, being so deposited in said trust company to the joint credit of said Cowdry and Gilman as trustees, which amounts thus deposited, with any interest accruing thereon, shall be subject to be drawn out from said trust company from time to time by the trustees to whose credit the same stands.

[And it is further ordered that said trustees, respectively, upon the subsequent presentation to them from time to time by the re-
326 spective holders of such outstanding and unpresented bonds and coupons, to provide for whom such deposits are made of such bonds or coupons, and, upon due cancellation of such bonds or coupons, or endorsement made thereon of the amount, paid on account

thereof out of the net proceeds of such sale, do pay to the respective holders of such bonds or coupons out of the amount so on deposit in said trust company to the credit of such trustees, respectively, the amount properly payable to the holders of such bonds or coupons, respectively, for their shares or proportions of the proceeds of such sale, together with such amount of interest as shall have accrued
327 thereon while on deposit as aforesaid *aforesaid* in said trust company, at such rate of interest as said trust company shall allow thereon.

And it is further ordered and decreed that said sherriff, if so directed by said Clarke and Barling, or by said Cowdry and Gilman respectively, shall accept and receive from the purchaser of said railroad and other premises, under said decree, certificates of deposit in said United States Trust Company of the amounts above directed to be deposited therein to the credit of said Clarke and Barling, trustees; and to the credit of said Cowdry and Gilman, trustees, respectively, in lieu of so much cash, and shall, in such case, turn over and deliver to said Clarke & Barling, trustees, and to said Cowdry & Gilman,
328 trustees, respectively, such certificates of deposit in lieu and stead of paying to them an equivalent amount of cash.

[And it is further ordered and decreed that the purchaser or purchasers of the said first and second parcels at the sale above directed to be made by said sherriff do pay in cash to the said sherriff, at or before the time of the delivery of said sherriff's deed to them respectively, the amount of the purchase-money or price at which the same shall be so sold by said sherriff, excepting such portion of such purchase-money as shall be paid in bonds or in certificates of deposit in the United
329 States Trust Company in pursuance of the foregoing directions in that behalf; but said sherriff, upon making the sales, may require the purchaser to pay at the time and place of sale ten per cent. of the purchase-money upon account, and the balance shall be payable upon the delivery of the deeds at the time fixed by said sherriff for such delivery, which shall be not less than fifteen nor more than thirty days from the day of sale.

[And it is further ordered and decreed that said sherriff do convey by good and sufficient deeds to the respective purchasers thereof, or their assigns, the said first and second parcels sold by the said sheriff in pursuance of the directions aforesaid, upon receiving payment of the
330 purchase-money of such first and second parcels, respectively, which conveyances so made shall be valid and effectual, and the grantees therein shall be let into possession of the premises so conveyed upon production of the sherriff's deed therefor, given in pursuance of such sale, and that any of the parties to this suit, and their agents and attorneys, who may be in possession of the same or any part thereof, and any parties claiming under them, or any of them, who may have come into such possession subsequently to the commencement of this suit, do deliver such possession to the grantees in such sherriff's deeds made as aforesaid. And it is further ordered that by the sales and
331 conveyances made by said sherriff, in pursuance of the directions aforesaid, the defendants in this action, and each of them, and all persons claiming or to claim under them, or any of them, subsequent to the commencement of this action, as purchasers, incumbrancers, or otherwise howsoever, shall be absolutely and forever barred and precluded of and from all estate, right, title, claim, interest, or equity of redemption in or to the said first and second parcels, respectively, so sold and conveyed.]

And it is further ordered that if there be any surplus of the proceeds of said sale, after the satisfaction of the several amounts so found to be due and ordered to be paid, the same shall be paid to the defend-
332 ant The Des Moines Valley Railroad Company.

It is further ordered and decreed that no bid shall be taken as an adequate bid for the entire length of said railroad from Keokuk to Fort Dodge for less than two million dollars.

And it is further ordered that this decree be without prejudice to the rights, if any, of A. F. Dicks, administrator of H. Stephenson, intervenor.

And without prejudice to the rights, if any, of The Ill. & Miss. Tel. Co.

And it is further ordered and decreed that the costs of the several parties to this suit be taxed and ascertained, and F. A. Dicks, ad-
333 ministrator of the estate of H. Stephenson, decd., and The Illinois & Mississippi Telegraph Company have sixty days to file bill of exceptions.

334 *Schedule A, containing a list of the rolling-stock, tools, and moveable personal property of the Des Moines Valley Railroad.*

PART ONE.—*Engines and cars.*

25 locomotive-engines.
9 passenger-cars.
2 sleeping-cars.
1 smoking-car.
2 baggage-cars.
5 mail & express cars.
4 old boarding-cars.
11 way-cars.
335 1 sawing-machine car.
1 wrecking-car.
191 box-cars.
111 coal-cars.
62 flat cars.
65 stock-cars.
2 lime-cars.
1 bridge & tool car.
1 pile-driving car.
1 wrecking and tool car.
Hand-car.

PART TWO.—*List of tools in machine-shop.*

1 stationary engine and boiler.
1 wheel-lathe.
1 Pittman " 24 in.
1 " " 15 in.
1 Pittman " 14 "
1 Pond " 26 "
1 " " 18 "
1 Fox " 14 "
1 axle " 22 "
336 1 grindstone.
1 punch and shears.
3 drill-presses.
2 planers.
1 car-wheel borer.
1 wheel-press.
2 shears, (small.)
1 punch, "
1 trip-hammer.
10 anvils.
Lot small tools.

PART THREE.—*Tools in car-shops.*

1 stationary engine and boiler.
1 Daniel's planer.
1 flooring-machine.
1 surfacing "
1 resawing "
1 moulding "
1 slitting "
1 Bard machine.
1 cut-off "
1 boring "
1 drill-press "
1 bolt-cutting machine.
1 mortising "
1 " planer.
Lot small tools.

337 STATE OF IOWA, *Polk County, ss:*

I, J. H. McClelland, clerk of the circuit court in and for said county and State, do hereby certify that the within and foregoing transcript is a full, true, and complete copy of the original decree (except the description of lands as set forth in Schedules B, C, & D, forming part of the original decree) entered in this cause on the 31st day of May, A. D. 1873, as full, true, and complete as the same now appears of record in my office.

Witness my hand and the seal of said court hereto affixed at my office this 6th day of June, A. D. 1873.

[SEAL.] J. H. McCLELLAND, *Clk.*
J. L. KEYES, *Dep'y Clk.*

338 GILMAN ET AL.
vs.
D. V. R. R. & ILL. & M. TEL. CO. ET AL.

Under the stipulation as to evidence to be found in this package, either party has a right to have in evidence any or all of the papers,
files, & entries in the foreclosure case, some of which, or copies
339 thereof, are contained in this package to save all question. All of the papers covered by stipulation are to be considered in evidence, and if any not found among the papers in this case are desired by the court or either party in the further progress of the case, they may be furnished or filed in this case.

(S'g'd) COOK, RICHMAN & BRUNING, *Attys.*

(Endorsed:) Filed Aug. 7, 1874. George B. Corkhill, cl'rk.

340 And, after the trial of said cause, the court having fully considered the matters, filed an opinion therein, of which the following is a true copy:

341 GILMAN & COWDREY ET AL., TRUSTEES,
vs.
ILLINOIS & MISS. TELEGRAPH CO.

U. S. circuit court, district of Iowa, Oct. term, 1874.

342 In 1857 the Des Moines Valley Railroad Company made to trustees a mortgage, and in 1868, to other trustees, another mortgage, to secure a large number of bonds.

They were ordinary railway mortgages, conveying the road, franchises, rolling-stock, &c., together with "all rents, issues, incomes, tolls, and profits."

In case of default to pay interest or principal, the trustees were authorized to take possession, "and collect and receive the tolls,
343 incomes, issues, and profits," and apply them on the debt secured by the mortgages, and, upon the request of one-third of the bondholders, to sell railroad and property mortgaged.

The trustees never took possession, but default having been made in the payment of interest on both mortgages, the trustees in the second mortgage, in July, 1872, commenced suit to foreclose in one of the State courts, making the railway company, the trustees in the first mortgage, and various judgment and lien creditors of the company parties defendant, and, among others, The Illinois and Mississippi Telegraph Com-

pany. No receiver was applied for or appointed pending the foreclosure proceedings, except as hereinafter stated.

On May 31st, 1873, a decree of foreclosure was entered by the
344 State court, fixing the priorities of the several parties, and holding that the telegraph company's judgment for $25,185.76, rendered in this court May 21, 1872, was a lien subject to the mortgage in suit and certain other specified liens.

The decree ordered a sale of the mortgaged property by the sherriff on special execution, but as originally entered made no provision as to the possession or earnings of the road (which was still in the possession of the railroad company and operated by it) between the date of the decree and the sale which the decree ordered.

This decree was rendered May 31, 1873, and on the 13th day of June, 1873, the telegraph company issued execution on its judgment out of this court and garnished, under the statute of the State, moneys in the hands of the agents of the railroad company at its various stations,
345 received by them from the income and earnings of the road.

On June 20, 1873, the trustees in the first & second mortgages filed in this court the present bill in equity against the telegraph company to enjoin the said proceedings upon the execution under its judgment; which bill was on the 27th day of June, 1873, amended so as to make The Des Moines Valley Railroad Company also a defendant, and a temporary injunction was allowed as prayed.

On September 9, 1873, after a sale had been advertised by the sherriff, application was informally made, without any petition for rehearing or bill of review, to the State court by the trustees under the first mortgage, for a modification of the decree of May 31, 1873, and the same was modified in several important particulars; and among other ad-
346 ditions to the decree was one appointing a "special receiver of all the income and earnings of the road" between the date of the decree or sherriff's first publication of notice of sale and the sale to be made by him. This was done, saving the rights of the telegraph company.

The special receiver took possession September 15, 1873. The sale by the sherriff under the decree (which was absolute and under which the purchasers were let into possession) took place Oct. 17, 1873, and left a large amount of the mortgage-bonds unpaid.

Between the date of the decree of May 31, 1873, and September 15, 1873, when the special receiver took possession, the road was operated by the railroad company, and during this period the net earnings, after paying operating expenses, were $27,147.96.

JOHN FYFFE &
347 GATCH, WRIGHT & RUNNELLS,
For the Plaintiffs.
COOK, RICHMAN & BRUNING,
For the Telegraph Company.

348 DILLON, *Circuit Judge:*

Among other security taken by the bondholders was a pledge of the income and earnings of the road, with a provision that the railroad company should remain in possession until default in the payment of interest or principal, and, upon default by the company in this respect, that the trustees might take possession and collect and receive the earnings of the road.

They never took possession or asked for it, nor did they apply for a receiver at any time prior to the 9th day of September, 1873. He took

possession Sept. 15. The decree rendered May 31, 1873, made no provision as to the income of the road or disposition of it.

The present controversy respects only the right to the net income between the date of the decree and the appointment of a special receiver.

349 The telegraph company claims it by virtue of its seizure on execution by garnishment of the agents of the railroad company. The plaintiffs claim it by virtue of the mortgages to them as trustees.

To this claim on the part of the plaintiffs, the defendant relies upon two main grounds of objection.

1st. That the decree of forclosure merges their rights under their mortgages, and now constitutes the measure of their rights, and as this decree did not give them the earnings in the interim between it and the sale, they cannot now fall back upon their mortgage and claims such earnings under it.

But if the plaintiffs may still rest upon the mortgages, the defendant contends that until they take possession under them, or apply for and obtain a receiver, the income or earnings may be used by the

350 company, or seized by its creditors, especially as the mortgage contains no covenant by the company to apply its net earnings to the payment of the mortgage debt.

If it be conceded that the first position of the telegraph company is not well taken, we would be brought at once to the inquiry what is the effect of the pledge of the rents and profits, and what must be done to make such pledge effectual.

The cases on this subject in this country are not very numerous, and those in England are controlled by very special statutory provisions.

The Supreme Court of the United States has decided that under a mortgage by a railway company of its tolls and income the bondholders or trustees cannot make the railroad company or its assignees

351 accountable therefor until at least a regular demand has been made upon the company therefor.

(Galveston Railroad vs. Cowdrey, 11 Wallace, 459, 482.)

So in Noyes vs. Rich, (52 Maine, 115,) it was held that a receiver appointed in a suit to for'close a railway mortgage could not recover the earnings of the road accruing before his appointment.

(And see City of Bath vs. Miller, 51 Maine, 341.)

In the case of the Galveston Railroad above cited, as here, a mortgage of the tolls and income, with power in the trustees, on default, to take possession and sell, Mr. Justice Bradley, referring to these provisions in the deed of trust, says:

"It seems to us that the latter clause defines and points out

352 the manner in which the pledge of the tolls and incomes is to be practically carried into effect. At all events, until a regular demand were made for the payment of the tolls and income, we do not think, under the language of the deed, that the defendants were bound to account therefor."

There is in the case now before us no proof of any demand of the trustees for the income or earnings upon the railroad company before the foreclosure suits against it, or pending the foreclosure suit, until the 9th day of September, when, upon the application of some of the trustees, a special receiver was appointed, unless this suit can be considered such a demand. I do not think it should be so regarded.

This suit was not brought to settle rights between the plaintiffs

353 and the railroad company; these had been settled, or were to

be settled, in the State court, which had jurisdiction of that controversy.

Since the railroad company, before & pending the foreclosure, were left in possession of the road, and since no attempt to disturb it was made, nor receiver applied for, or provisions made in the decree as to the earnings between the decree and the sale, I am impressed with the belief that the plffs. in the foreclosure suit do not intend to disturb the possession of the company, and that no question would have been made as to the earnings, or their application, if the telegraph company had not levied its execution. On the whole, I think the bill ought to be dismissed.

Decree accordingly.

354 Afterwards, to wit, on the 21st day of October, the same being of the October term, 1874, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, October term, 1874, Wednesday, Oct. 21st, 1874.

W. S. GILMAN, N. A. COWDREY, LUTHER Clark, & Henry A. Barling,
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH Company, The Des Moines Valley Railroad Company, and Peter Melendy, U. S. marshal for Iowa. } No. 417. Eq.

This cause having been heretofore submitted to the court upon the bill, answer, and replication, exhibits and testimony, and arguments of counsel, and the court being fully advised in the premises, gave
355 leave to the deft. The Illinois & Mississippi Telegraph Company to file a cross-bill herein, which having been filed, was afterward, by leave of court, withdrawn by the said defendant; whereupon it is ordered, adjudged, and decreed by the court that the complainants' bill be dismissed with costs. Thereupon it is ordered, adjudged, and decreed that the defendants recover from complainants their costs herein, taxed at $, and that execution issue therefor.

356 Afterwards, to wit, on the 22d day of October, the same being of the October term, 1874, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, October term, 1874, Thursday, Oct. 22, 1874.

W. S. GILMAN, N. A. COWDREY, ET. AL.,
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH Company. } No. 417. Eq.

Complainants this day pray an appeal to the Supreme Court of the United States from the drecree of this court entered herein on yesterday, which is allowed on their filing a bond in the penal sum of five hundred dollars, conditioned as the law directs, with sureties to be approved by the court.

357 Afterwards, to wit, on the 30th day of December, 1874, the said complainants, by their attys., file in said clerk's office their

possession Sept. 15. The decree rendered May 31, 1873, made no provision as to the income of the road or disposition of it.

The present controversy respects only the right to the net income between the date of the decree and the appointment of a special receiver.

349 The telegraph company claims it by virtue of its seizure on execution by garnishment of the agents of the railroad company. The plaintiffs claim it by virtue of the mortgages to them as trustees.

To this claim on the part of the plaintiffs, the defendant relies upon two main grounds of objection.

1st. That the decree of forclosure merges their rights under their mortgages, and now constitutes the measure of their rights, and as this decree did not give them the earnings in the interim between it and the sale, they cannot now fall back upon their mortgage and claims such earnings under it.

But if the plaintiffs may still rest upon the mortgages, the defendant contends that until they take possession under them, or apply for and obtain a receiver, the income or earnings may be used by the

350 company, or seized by its creditors, especially as the mortgage contains no covenant by the company to apply its net earnings to the payment of the mortgage debt.

If it be conceded that the first position of the telegraph company is not well taken, we would be brought at once to the inquiry what is the effect of the pledge of the rents and profits, and what must be done to make such pledge effectual.

The cases on this subject in this country are not very numerous, and those in England are controlled by very special statutory provisions.

The Supreme Court of the United States has decided that under a mortgage by a railway company of its tolls and income the bondholders or trustees cannot make the railroad company or its assignees

351 accountable therefor until at least a regular demand has been made upon the company therefor.

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"It seems to us that the latter clause defines and points out

352 the manner in which the pledge of the tolls and incomes is to be practically carried into effect. At all events, until a regular demand were made for the payment of the tolls and income, we do not think, under the language of the deed, that the defendants were bound to account therefor."

There is in the case now before us no proof of any demand of the trustees for the income or earnings upon the railroad company before the foreclosure suits against it, or pending the foreclosure suit, until the 9th day of September, when, upon the application of some of the trustees, a special receiver was appointed, unless this suit can be considered such a demand. I do not think it should be so regarded.

This suit was not brought to settle rights between the plaintiffs

353 and the railroad company; these had been settled, or were to

be settled, in the State court, which had jurisdiction of that controversy.

Since the railroad company, before & pending the foreclosure, were left in possession of the road, and since no attempt to disturb it was made, nor receiver applied for, or provisions made in the decree as to the earnings between the decree and the sale, I am impressed with the belief that the plffs. in the foreclosure suit do not intend to disturb the possession of the company, and that no question would have been made as to the earnings, or their application, if the telegraph company had not levied its execution. On the whole, I think the bill ought to be dismissed.

Decree accordingly.

354 Afterwards, to wit, on the 21st day of October, the same being of the October term, 1874, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, October term, 1874, Wednesday, Oct. 21st, 1874.

W. S. GILMAN, N. A. COWDREY, LUTHER Clark, & Henry A. Barling,
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH Company, The Des Moines Valley Railroad Company, and Peter Melendy, U. S. marshal for Iowa. } No. 417. Eq.

This cause having been heretofore submitted to the court upon the bill, answer, and replication, exhibits and testimony, and arguments of counsel, and the court being fully advised in the premises, gave
355 leave to the deft. The Illinois & Mississippi Telegraph Company to file a cross-bill herein, which having been filed, was afterward, by leave of court, withdrawn by the said defendant; whereupon it is ordered, adjudged, and decreed by the court that the complainants' bill be dismissed with costs. Thereupon it is ordered, adjudged, and decreed that the defendants recover from complainants their costs herein, taxed at $, and that execution issue therefor.

356 Afterwards, to wit, on the 22d day of October, the same being of the October term, 1874, of said court, there appears in the records of the proceedings thereof in said cause the following entry, to wit:

United States circuit court, district of Iowa, October term, 1874, Thursday, Oct. 22, 1874.

W. S. GILMAN, N. A. COWDREY, ET. AL.,
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH Company. } No. 417. Eq.

Complainants this day pray an appeal to the Supreme Court of the United States from the drecree of this court entered herein on yesterday, which is allowed on their filing a bond in the penal sum of five hundred dollars, conditioned as the law directs, with sureties to be approved by the court.

357 Afterwards, to wit, on the 30th day of December, 1874, the said complainants, by their attys., file in said clerk's office their

appeal-bond in said cause; which said appeal-bond is in the words and figures following, to wit:

Supreme Court of the United States.

Know all men by these presents that we, W. S. Gilman, N. A. Cowdry, Luther C. Clarke, and Henry A. Barling, George B. Smyth, and C. A. Perry, of Keokuk, are held and firmly bound unto The Illinois and Mississippi Telegraph Company, The Des Moines Valley Railroad Com-
358 pany, and Peter Melendy, United States marshal in and for the district of Iowa, in the sum of five hundred dollars, to be paid to the said Illinois and Mississippi Telegraph Company, &c., their successors, representatives, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and one and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this 29th day of December, A. D. 1874.

Whereas the above-named W. S. Gilman, N. A. Cowdrey, Luther C. Clark, & Henry A. Barling have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled action by the circuit court of the United States in and for
359 the district of Iowa:

Now, therefore, the condition of this obligation is such that if the above-named W. S. Gilman, N. A. Cowdry, Luther C. Clark, and Henry A. Barling shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) W. S. GILMAN.
" N. A. COWDREY.
" LUTHER C. CLARKE.
" HENRY A. BARLING.
" GEORGE B. SMYTH.
" C. H. PERRY.

Sealed and delivered in presence of—
A. BRIDGMAN.

Approved.

J. M. LOVE, *Judge.*

360 And on the 3d day of Feb'y, 1875, a citation was filed in said cause with the return of service endorsed thereon, which said original citation is as follows:

361 By the honorable James M. Love, district judge of the United States for the district of Iowa, and a member of the circuit court of the United States in and for said district.

To The Illinois and Mississippi Telegraph Company, The Des Moines Valley Railroad Company, and Peter Melendy, United States marshall for the district of Iowa:

Whereas W. S. Gilman, N. A. Cowdry, Luther C. Clarke, and Henry C. Barling have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States in and for the district of Iowa, made in favor of you, the said Illinois and Mississippi Telegraph Company, The Des Moines Valley Railroad Company, and Peter Melendy, United States marshall, and
362 has filed the security required by law: You are, therefore, hereby cited to appear before the said Supreme Court, at the city of

Washington, on the second Monday of October, A. D. 1875, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Keokuk, in the district of Iowa, in the circuit, the 29th day of December, 1874.

J. M. LOVE, *Judge.*

The service of the foregoing citation on The Illinois & Mississippi Telegraph Company is hereby acknowledged to have been duly made this 2nd day of February, 1875.

THE ILLINOIS & MISSISSIPPI TELEGRAPH COMPANY,
By COOK, RICHMAN & BRUNING,
Its Attorneys.

(Indorsed:) 417. W. S. Gilman & N. A. Cowdry et al. vs. The Illinois & Mississippi Tel. Co. et al. Citation on appeal to the Supreme Court United States. Filed Feb. 3, 1875. George B. Corkhill, clerk.

363 United States circuit court, district of Iowa.

I, George B. Corkhill, clerk of said court for said district, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of all pleadings, documentary evidence, record-entries, final decree, opinion of court, and appeal-bond in a certain cause adjudicated in said court, wherein W. S. Gilman, N. A. Cowdry, and others were complainants, and The Illinois and Mississippi Telegraph Company and others were respondents, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I further certify that the original citation, with return of service endorsed thereon, is hereunto attached.

In testimony whereof I herewith subscribe my name and affix the seal of said court at my office in Des Moines, in said district, this the 8th day of March, A. D. 1875.

[SEAL.] GEORGE B. CORKHILL,
Clerk U. S. Circ't Court, Dist. Iowa.

364 W. L. GILMAN ET AL., APPELLANTS,
vs.
THE ILLINOIS & MISSISSIPPI TELEGRAPH COMpany et al. } In equity.

Service of the citation in this case is hereby acknowledged to have been duly made upon our company, one of the defendants in this action, this 29th Dec'r, 1874.

A. BRIDGMAN,
Sect'y of Des Moines Valley Railroad Company.

(Indorsed:) Sup. Court U. S., Oct. term, 1875. No. 557. W. S. Gilman et al. vs. The Ills. & Miss. Tel. Co. & The Des Moines Valley R. R. Co. et al. Acceptance of service of citation of Des Moines Valley R. R. Co. Filed 20 Aug., '75.

(Indorsement on cover:) No. 557. W. S. Gilman, N. A. Cowdrey, Luther C. Clark, and Henry A. Barling, appellants, vs. The Illinois & Mississippi Telegraph Company, The Des Moines Valley Railroad Company, & al. Iowa C. C. U. S. Filed 17th August, 1875.

REC. 557—6